

HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the Metcalf Energy Center)	99-AFC-3
(Calpine Corporation and)	
Bechtel Enterprises, Inc.))	
<hr/>)	

CITY COUNCIL CHAMBERS
SAN JOSE CITY HALL
801 NORTH FIRST STREET
SAN JOSE, CALIFORNIA

THURSDAY, JANUARY 18, 2001

2:10 p.m.

Reported by:
James Ramos
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

Stanley Valkosky, Hearing Officer

Mike Smith, Advisor to Chairman Keese

STAFF PRESENT

Kerry Willis

Paul Richins

Lorraine White

Joe O'Hagan

APPLICANT

Jeffery D. Harris, Attorney,
Christopher T. Ellison, Attorney
Ellison, Schneider and Harris
Calpine Corporation/Bechtel Enterprises

Kenneth E. Abreu, Development Manager
Calpine Corporation
Metcalf Energy Center

John L. Currier, Senior Project Manager
David L. Richardson
John Dickey
Tonianne F. Pezzetti
Earl R. Byron
Ben Everett
Jim Dunstan
CH2MHILL

Kris Helm
PBS&J Consultants

Steve DeYoung
Calpine Corporation/Bechtel Enterprises

INTERVENORS

Scott Scholz
South San Jose.com

INTERVENORS

Elizabeth Cord, President
Santa Teresa Citizen Action Group

William J. Garbett
Agent, Public

Issa Ajlouny
Agent, Public

Michael E. Boyd, Commissioner
City of Sunnyvale
CARE

Robert F. Williams, President
Williams Technical Associates, Inc.
ST Action

ALSO PRESENT

Mollie Dent
Randolph A. Shipes
City of San Jose

Keith Whitman
Santa Clara Valley Water District

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 P R O C E E D I N G S

2 2:10 p.m.

3 PRESIDING MEMBER LAURIE: Good
4 afternoon, everybody, and welcome to the
5 California Energy Commission hearing on the
6 Metcalf Energy Project.

7 My name is Robert Laurie, Commissioner
8 at the California Energy Commission and Presiding
9 Member of the Commission Committee hearing this
10 case. To my right is Mr. Stan Valkosky, the
11 Energy Commission's Chief Hearing Officer, and the
12 Hearing Officer assigned to this case.

13 And to Mr. Valkosky's right is Mr. Mike
14 Smith, the Senior Advisor to my colleague on the
15 Committee, Commissioner and Chairman Bill Keese.

16 Mr. Valkosky will review for us the
17 items to be covered today and the procedures to be
18 followed. Then, for purposes of the record, we'll
19 ask for introductions once again, although to a
20 large extent you're beginning to know your
21 neighbors very well.

22 MR. WILLIAMS: Sir.

23 PRESIDING MEMBER LAURIE: Mr. Williams.

24 MR. WILLIAMS: -- if there was any
25 arrangement made for parking or --

1 PRESIDING MEMBER LAURIE: There is no
2 arrangement for parking. I'm parked in
3 Pleasanton, I think --

4 (Laughter.)

5 PRESIDING MEMBER LAURIE: Stan is parked
6 in Milpitas somewhere. No, we have no
7 arrangements. If we meet back here again we'll
8 see what we can work out.

9 Mr. Valkosky.

10 HEARING OFFICER VALKOSKY: Thank you,
11 Commissioner. Today is the second day of this set
12 of evidentiary hearings. Yesterday we concluded
13 the noise topic and closed the record on that
14 topic. Today we will address soil and water
15 resources and if time allows, traffic,
16 transportation, and hazardous materials
17 management.

18 As I have it today, and I'd like the
19 parties to correct me if I'm wrong, the witnesses
20 we expect on soil and water are a panel on behalf
21 of the applicant, is that correct, Mr. Harris?

22 MR. HARRIS: Yes, sir.

23 HEARING OFFICER VALKOSKY: Another panel
24 on behalf of the staff?

25 MS. WILLIS: That's correct.

1 HEARING OFFICER VALKOSKY: And a witness
2 from the City of San Jose, is that correct, Ms.
3 Dent?

4 MS. DENT: Correct.

5 HEARING OFFICER VALKOSKY: Okay. Those
6 are the only witnesses that we're looking at. The
7 procedures will be the same as the ones we've
8 followed for the past several days of hearings.

9 And with that, unless there are any
10 questions, I'd like the parties to introduce
11 themselves for the record, beginning with the
12 applicant, Mr. Harris.

13 MR. HARRIS: My name is Jeff Harris with
14 Ellison, Schneider and Harris, here on behalf of
15 Calpine/Bechtel joint venture. To my right is Mr.
16 Ken Abreu, the Project Manager for Calpine/Bechtel
17 joint venture.

18 To my left is Mr. Chris Ellison of
19 Ellison, Schneider and Harris, as well. And to
20 his left is Mr. Steve DeYoung, the Environmental
21 Project Manager for the Calpine/Bechtel joint
22 venture. As well as various other representatives
23 in the audience, thank you.

24 HEARING OFFICER VALKOSKY: Thank you.
25 Ms. Willis.

1 MS. WILLIS: Yes, thank you. I'm Kerry
2 Willis, Staff Counsel with the Energy Commission.
3 And to my right is Paul Richins, Project Manager
4 for the Metcalf Energy Center project. To my left
5 is Lorraine White; and to her left is Joe O'Hagan.
6 Both are witnesses in our water testimony.

7 HEARING OFFICER VALKOSKY: Thank you.
8 Mr. Williams, do you want to start off the
9 intervenors' introductions?

10 MR. WILLIAMS: Yes, sir, I'm Robert
11 Williams. I'm an intervenor, resident living one
12 mile from the plant at 7039 Via Padera.

13 MS. DENT: I'm Mollie Dent; I'm with the
14 City of San Jose. We're not an intervenor in the
15 proceeding, we're an interested government party.

16 MS. CORD: Elizabeth Cord; I'm
17 representing Santa Teresa Citizen Action Group.

18 MR. AJLOUNY: Issa Ajlouny, representing
19 myself as an intervenor, a friendly intervenor.

20 MR. SCHOLZ: Scott Scholz, local
21 resident, intervenor.

22 HEARING OFFICER VALKOSKY: Thank you.
23 Before we begin are there any other matters that
24 have to be brought to the Committee's attention?
25 Mr. Ajlouny.

1 MR. AJLOUNY: Yes, Stan, I've talked to
2 my witness, Todd Spellman, and because I got to
3 him too late his schedule is open between 2:00 and
4 6:00 today. I did just get off the phone with
5 him, and he can be here at 4:00. After talking
6 with the applicant, that might work if there's a
7 convenient time to break. And also, if their
8 witness is here to witness my witness, is that
9 correct, Jeff?

10 MR. HARRIS: Yes, those are the two main
11 concerns. We'd like to have our witness here to
12 hear the testimony, and then also making sure that
13 we're at a logical break in the proceedings.

14 HEARING OFFICER VALKOSKY: Okay, we'll
15 reassess that at 4:00, and if it's possible and
16 appropriate, we'll accommodate your witness at
17 that time.

18 MR. AJLOUNY: Thank you.

19 HEARING OFFICER VALKOSKY: Okay, Mr.
20 Harris.

21 MR. HARRIS: Yes, we're ready to
22 proceed. Should I have my witnesses come forward?

23 HEARING OFFICER VALKOSKY: Please do.

24 MR. HARRIS: Okay. We have a panel and
25 I'll explain while they're coming forward, the

1 panel is seven witnesses. Five of those are for
2 our direct testimony. The two additional
3 witnesses are available for rebuttal testimony. I
4 thought it would be best to have them all
5 available now and sworn for administrative
6 convenience, and also to allow for them to be
7 available for cross-examination.

8 So, I actually -- I guess instead of
9 introducing them now, we'll have them sworn and
10 then I'll have them all give their qualifications
11 at the appropriate time.

12 HEARING OFFICER VALKOSKY: Okay, if you
13 could swear the witnesses, please.

14 Whereupon,

15 DAVID RICHARDSON, JOHN DICKEY,
16 TONIANNE PEZZETTI, EARL BYRON, BEN EVERETT,
17 KENNETH ABREU and KRIS HELM
18 were called as witnesses herein, and after first
19 having been duly sworn, were examined and
20 testified as follows:

21 MR. HARRIS: We're going to have Mr.
22 Dave Richardson from CH2MHILL act as our focal
23 point to help streamline the process. And so I'm
24 going to direct most of the questions to Mr.
25 Richardson. He will also provide most of the

1 direct testimony, and I'll actually have him go
2 through the qualifications here at this point, as
3 well.

4 DIRECT EXAMINATION

5 BY MR. HARRIS:

6 Q Mr. Richardson, would you please state
7 your name for the record.

8 MR. RICHARDSON: David Richardson,
9 R-i-c-h-a-r-d-s-o-n.

10 MR. HARRIS: And what subject matter is
11 the panel here to testify to today?

12 MR. RICHARDSON: To water and soil
13 resources.

14 MR. HARRIS: The documents that you
15 prepared as part of your testimony listed as the
16 prior filings in your filed testimony?

17 MR. RICHARDSON: Yes.

18 MR. HARRIS: And I understand that in
19 addition to the documents there are, I think, some
20 additional documents that you need to move into
21 evidence, is that correct?

22 MR. RICHARDSON: That's correct.

23 MR. HARRIS: Rather than having the
24 witness read through the entire list, and then
25 having me read through it again, if it's

1 convenient I'll go ahead and go through those
2 documents and identify the exhibit numbers.

3 The first sections are sections of the
4 AFC, 7, 8.9 and 8.14 are part of exhibit 1. AFC
5 supplement A is exhibit 3. The AFC supplement C
6 is exhibit 5. Water resource prior comments on
7 the PSA, set 1 is exhibit 37. Set 3 is a new item
8 and I'd ask that it be given an exhibit number.

9 HEARING OFFICER VALKOSKY: We'll assign
10 that exhibit 38.

11 MR. HARRIS: Thank you. Set 5 is a new
12 document as well; we'd ask that that be given an
13 exhibit number.

14 HEARING OFFICER VALKOSKY: Identified as
15 39.

16 MR. HARRIS: Set 7 is previously
17 identified as exhibit 23. Set 9 is previously
18 identified as exhibit 30. Set 10 is a new
19 exhibit, I'd ask that that be numbered.

20 HEARING OFFICER VALKOSKY: Identified as
21 40.

22 MR. HARRIS: The December letter,
23 there's a note there that the date is wrong on
24 that letter in the prior filing. I think the date
25 in the prior filing says the 9th of December. The

1 actual date is December 2nd, so that's just a
2 clarification on that document. That's a new
3 document, I'd ask that that be given a number.

4 HEARING OFFICER VALKOSKY: 41.

5 MR. HARRIS: The letter from April 14,
6 2000 is a new document.

7 HEARING OFFICER VALKOSKY: 42.

8 MR. HARRIS: July 6, 2000, it's a new
9 document.

10 HEARING OFFICER VALKOSKY: 43.

11 MR. HARRIS: July 31, 2000.

12 HEARING OFFICER VALKOSKY: 44.

13 MR. HARRIS: And September 6, 2000.

14 HEARING OFFICER VALKOSKY: 45.

15 MR. HARRIS: And then the water
16 resources testimony of group 2A is previously
17 marked as exhibit 8.

18 The CEC data responses 46, 47, 114 to
19 123, 125, 127, 129 to 132, 136 to 139, 142, 143,
20 146 to 152 previously marked as exhibit 13.

21 Numbers 126 and 145 previously marked as
22 number 20. Numbers 124, 128, 133, 140, 141 and
23 144 previously marked as number 26.

24 Numbers 128, 135, 141 and 144 is a new
25 document.

1 HEARING OFFICER VALKOSKY: 46.

2 MR. HARRIS: Okay. Number 134 is a new
3 document from set 1F.

4 HEARING OFFICER VALKOSKY: Identified as
5 47.

6 MR. HARRIS: 133 as part of 1H.

7 HEARING OFFICER VALKOSKY: 48.

8 MR. HARRIS: 147 as part of 1K.

9 HEARING OFFICER VALKOSKY: 49.

10 MR. HARRIS: 146 is part of 1L.

11 HEARING OFFICER VALKOSKY: 50.

12 MR. HARRIS: 155, 211 and 215 previously
13 marked as number 14. 213 previously marked as
14 number 21. 155, which is a new document, it's
15 part of 2E.

16 HEARING OFFICER VALKOSKY: 51.

17 MR. HARRIS: 3-216, part of 3E.

18 HEARING OFFICER VALKOSKY: 52.

19 MR. HARRIS: 3-217 is part of 3C.

20 HEARING OFFICER VALKOSKY: 53.

21 MR. HARRIS: 233 to 237 previously
22 marked as number 15.

23 The informal data response to Lorraine
24 White, that document was identified previously but
25 we wanted to clarify its existence. And so --

1 apparently I missed one, we'll come back to it --
2 the informal data response to Lorraine White is
3 part A as part of the packet that I provided to
4 the panel and to the intervenors as a new exhibit.

5 HEARING OFFICER VALKOSKY: 54.

6 MR. HARRIS: The September 7th informal
7 data response to Lorraine White, part B to that
8 one is a new exhibit.

9 HEARING OFFICER VALKOSKY: 55.

10 MR. HARRIS: Water resources 1 to water
11 resources 4 is a new exhibit.

12 HEARING OFFICER VALKOSKY: 56.

13 MR. HARRIS: CVRP data requests 3, 4, 5F
14 and 5G, previously marked as number 17. 5F, 6 and
15 7 is a new exhibit.

16 HEARING OFFICER VALKOSKY: 57.

17 MR. HARRIS: Part C, numbers 15 and 16,
18 is a new exhibit.

19 HEARING OFFICER VALKOSKY: 58.

20 MR. HARRIS: And part 17 is a new
21 exhibit.

22 HEARING OFFICER VALKOSKY: 59.

23 MR. HARRIS: The Rancho Santa Teresa
24 Swim and Racquet Club data request number 4, this
25 is one of the ones in the documents I provided.

1 It's a new exhibit.

2 HEARING OFFICER VALKOSKY: Number 60.

3 MR. HARRIS: The April 17th memo to
4 Lorraine White regarding summary of Metcalf water
5 supply issues is also among those documents, and
6 it's a new one.

7 HEARING OFFICER VALKOSKY: 61.

8 MR. HARRIS: The group 2A rebuttal
9 testimony is part of data set 1, that's also a new
10 document.

11 HEARING OFFICER VALKOSKY: 62. Are you
12 sure that isn't one we've identified already?

13 MR. HARRIS: I'm sorry, it's the
14 rebuttal testimony portion of that, so the 2A
15 testimony has been moved. This is our rebuttal
16 testimony on water.

17 HEARING OFFICER VALKOSKY: Okay, 62.

18 MR. HARRIS: The 9/15/2000 letter to
19 Paul Richins from Ken Abreu is a new document, as
20 well.

21 HEARING OFFICER VALKOSKY: 63.

22 MR. HARRIS: The 9/26 letter to Paul
23 Richins from Ken Abreu is a new document.

24 HEARING OFFICER VALKOSKY: 64.

25 MR. HARRIS: And the 11/7/2000 memo to

1 Randy Shipes is a new document, as well.

2 HEARING OFFICER VALKOSKY: 65. Mr.

3 Harris, my understanding is that these have all be
4 either previously docketed or otherwise provided
5 to all the parties. Is that a correct
6 understanding?

7 MR. HARRIS: Yes, they were all docketed
8 and filed and served with one exception, the very
9 last document on the list, 11/7/2000 memo from
10 Randy Shipes to Rich Buikema is a document that we
11 received as part of the City's land use testimony.
12 We received it this Monday, so I think it has been
13 docketed as part of the City's testimony.

14 HEARING OFFICER VALKOSKY: Okay, thank
15 you.

16 MR. HARRIS: The 3-216, can we make
17 those 52A and 52B? Apparently they're two
18 separate documents. It's a data response and a
19 revision to that.

20 HEARING OFFICER VALKOSKY: Okay, so 3-
21 216 data set 3E will be 52A.

22 MR. HARRIS: Right.

23 HEARING OFFICER VALKOSKY: And 3-216
24 data set 3F will be 52B.

25 MR. HARRIS: Yes. Sorry for that.

1 HEARING OFFICER VALKOSKY: Not a
2 problem.

3 MR. HARRIS: Okay, we'll return to Mr.
4 Richardson now, if that's appropriate.

5 BY MR. HARRIS:

6 Q With those changes and clarifications
7 and corrections, Mr. Richardson, are there any
8 other changes or clarifications to your testimony
9 or the testimony of the panel?

10 MR. RICHARDSON: No.

11 MR. HARRIS: And were these documents
12 prepared either by you or members of the panel or
13 at your direction?

14 MR. RICHARDSON: Yes.

15 MR. HARRIS: Are the facts stated
16 therein true to the best of your knowledge?

17 MR. RICHARDSON: Yes.

18 MR. HARRIS: And are the opinions stated
19 therein your own?

20 MR. RICHARDSON: Yes.

21 MR. HARRIS: And do you adopt this as
22 the testimony for this panel for this proceeding?

23 MR. RICHARDSON: Yes.

24 MR. HARRIS: Could you briefly summarize
25 your qualifications, please.

1 MR. RICHARDSON: I'm a Registered
2 Professional Engineer in the State of California.
3 I'm a Senior Water Project Program Manager for
4 CH2MHILL. I have been working in the field for 19
5 years, primarily in the areas of water, recycled
6 water and wastewater engineering.

7 And my educational background is a
8 bachelors in civil engineering; a masters in civil
9 environmental engineering; and a masters in
10 business with a specialty in marketing from
11 Stanford.

12 MR. HARRIS: Thank you. At this point
13 I'd actually like to have the rest of the
14 witnesses introduce themselves and briefly
15 summarize their qualifications. Ms. Pezzetti,
16 please.

17 MS. PEZZETTI: My name is Tonianne
18 Pezzetti, P, as in Peter, -e-z-z-e-t-t-i.

19 MR. HARRIS: And can you summarize your
20 qualifications briefly?

21 MS. PEZZETTI: I have a bachelors degree
22 in geology from the University of Colorado at
23 Boulder; a masters degree in geology from the Ohio
24 State University.

25 I am a Registered Geologist and a

1 Certified Hydrogeologist in the State of
2 California.

3 For the past 14 years I've been working
4 as a hydrogeologist; 12 of those years have been
5 with CH2MHILL. I have worked on groundwater
6 management supply and protection projects,
7 managing and participating in those projects.

8 Many of those projects have involved the
9 development of a three dimensional numerical
10 groundwater model.

11 MR. HARRIS: Thank you. Why don't we
12 just go around the table to Mr. Abreu.

13 MR. ABREU: Ken Abreu, A-b-r-e-u.

14 MR. HARRIS: And can you summarize your
15 qualifications for us?

16 MR. ABREU: I'm the Development Manager
17 for the Metcalf Energy Center. I have a masters
18 degree in mechanical engineering from UC Berkeley
19 and a bachelors degree from San Jose State in
20 engineering.

21 Over 22 years experience in electric
22 power generation industry and engineering project
23 development, power procurement and fuels.

24 MR. HARRIS: Thank you. Mr. Helm,
25 please.

1 MR. HELM: Kris, K-r-i-s, Helm, H-e-l-m.

2 I'm a Senior Program Manager with PBS&J
3 Consultants. I have extensive experience in
4 negotiation of water service, recycle service and
5 sewerage service agreements between public and
6 private agencies. And extensive experience in the
7 analysis and establishment of policy relative to
8 water service and pricing. And specific
9 experience in the negotiation of complex recycled
10 water service arrangements with industrial
11 customers.

12 I've been working on the Metcalf Energy
13 Center since February of 2000. And a complete
14 copy of my rÇsumÇ is attached to my testimony.

15 MR. HARRIS: Thank you. Mr Everett,
16 please.

17 MR. EVERETT: I'm Ben Everett,
18 E-v-e-r-e-t-t. I am a Senior Engineer with
19 CH2MHILL. My formal education consists of two
20 degrees, a masters and bachelors degree in civil
21 engineering from the University of California at
22 Berkeley.

23 I am a Professional Engineer, Civil
24 Engineer, registered in California. My 34-year
25 career has included expertise in all forms of

1 service water engineering, including flood
2 hydraulics.

3 MR. HARRIS: Dr. Byron, please.

4 DR. BYRON: My name's Earl Byron,
5 B-y-r-o-n.

6 MR. HARRIS: Can you summarize your
7 qualifications?

8 DR. BYRON: I'm the Environmental
9 Scientist with CH2MHILL specializing in aquatic
10 ecology and water quality. I have a bachelors in
11 marine biology from the University of California
12 at Santa Barbara and a PhD in fresh water ecology
13 from the University of Colorado in Boulder.

14 And I've worked in the field of water
15 quality first at University of California at Davis
16 where I had a research position and directed an
17 environmental monitoring program. And for the
18 last 11 years at CH2MHILL in all phases of aquatic
19 science consulting with many projects that
20 evaluate discharge and runoff water quality.

21 MR. HARRIS: And Dr. John Dickey,
22 please.

23 DR. DICKEY: John Dickey, D-i-c-k-e-y.

24 MR. HARRIS: Could you summarize your
25 qualifications?

1 DR. DICKEY: I'm a Principal Soil
2 Scientist, an Agronomist with CH2MHILL. Have been
3 for ten years. Worked about 20 years in my field,
4 counting post-graduate education time.

5 Worked for Purdue University two years
6 overseas as an agronomist. And have masters in
7 agronomy, PhD in soil science. I've worked on
8 about 75 projects involving land application of
9 reclaimed water, wastewater. And many projects
10 involving the evaluation of soils and agriculture
11 for specific land uses.

12 MR. HARRIS: Thank you. The way we'd
13 like to proceed is to have Mr. Richardson present
14 the summary of the testimony with the
15 understanding that if other members of the panel
16 feel that he has misspoken or that something needs
17 clarification, that they will speak up at that
18 time.

19 But otherwise we'll focus primarily on
20 Mr. Richardson. That's the way we'd like to
21 proceed.

22 HEARING OFFICER VALKOSKY: Proceed.

23 MR. HARRIS: Can you summarize your
24 testimony very briefly, Dave?

25 MR. RICHARDSON: The Metcalf Energy

1 Center is planning to use recycled water to meet
2 over 90 percent of its water needs. This will
3 minimize the extraction of groundwater and
4 substantially reduce the City of San Jose's
5 discharge to the South San Francisco Bay,
6 providing significant environmental and economic
7 benefits.

8 MR. HARRIS: Can you please describe
9 Metcalf's use of water, or water use?

10 MR. RICHARDSON: The Energy Center is
11 projected to use both recycled water and
12 groundwater. For cooling water the average use
13 would be 3.3 million gallons per day of recycled
14 water.

15 For process water, 0.2 million gallons
16 per day or less than 10 percent of the water
17 needs, in groundwater, would be used for that
18 purpose.

19 The groundwater would also be used as a
20 backup cooling water supply during shutdowns of
21 the recycled water system.

22 Recycled water is available from South
23 Bay Water Recycling which has the capacity to
24 provide the water. A pipeline to serve the
25 Metcalf Energy Center has been routed by the City.

1 Metcalf Energy Center has adopted the City's
2 preferred route, and an environmental review has
3 been conducted.

4 Service to the Energy Center is
5 consistent with the City's plans for long-term
6 recycled water use. And the City contemplates
7 requesting an over-sizing of the supply pipeline
8 and paying for it.

9 MR. HARRIS: Now, with regard to the
10 City's discharge of water to the Bay, could you
11 describe that for us, please?

12 MR. RICHARDSON: The discharge of
13 wastewater from the Metcalf Energy Center would be
14 conveyed via trunk sewer to the sewer at Santa
15 Teresa Road, and that flow would be approximately
16 0.6 million gallons per day, which is about 20
17 percent of the water use by the Energy Center.
18 And then convey to the San Jose/Santa Clara Water
19 Pollution Control Plant.

20 The water would eventually be discharged
21 into San Francisco Bay or back into the South Bay
22 Water Recycling system.

23 MR. HARRIS: With regard to the
24 potential impacts on the water pollution control
25 plant, what were your findings there?

1 MR. RICHARDSON: The impacts on the
2 water pollution control plant would be
3 insignificant. The City has plenty of treatment
4 plant capacity to meet the Metcalf flow. However,
5 they have a limit to their disposal capacity.

6 They currently have an average dry
7 weather flow approaching 130 million gallons per
8 day into the plant. They have a Regional Water
9 Quality Control Board order number 98052 limiting
10 discharge during dry weather season to 120 million
11 gallons per day, which is also referred to
12 sometimes as a flow trigger.

13 In order to protect the South Bay salt
14 marsh habitat and the endangered species there,
15 those include the salt marsh harvest mouse --.
16 The City has limited options by which to reduce
17 their discharge to meet the 120 million gallon
18 target.

19 South Bay Water Recycling is a
20 significant component of their system to reduce
21 that discharge, and currently recycles about 9 mgd
22 average dry weather flow. And so the 2.7 million
23 gallon per day net evaporation by the Metcalf
24 Energy Center, which is 3.3 million gallons water
25 in minus .6 million gallons per day of water out,

1 that net would increase South Bay Water Recycling
2 demand for water by over 33 percent.

3 The Metcalf Energy Center thereby
4 provides substantial benefits to South Bay Water
5 Recycling and the City. It allows for new
6 connections to the sewer system and the treatment
7 plant and their corresponding fees. And it avoids
8 the cost of additional disposal capacity which we
9 value at between 10 million on the low end and 48
10 million or higher.

11 MR. HARRIS: Okay, I want to focus on
12 this issue again for a second before moving on.
13 It's a little counter-intuitive. So what you're
14 saying is that the City has a trigger on how much
15 fresh water it can put into the Bay?

16 MR. RICHARDSON: That's correct.

17 MR. HARRIS: And how does Metcalf
18 benefit the City in that connection?

19 MR. RICHARDSON: By using 3.3 million
20 gallons per day of recycled water, and discharging
21 only .6 million gallons per day back to the City.
22 There's a net evaporation consumption of 2.7
23 million gallons per day that would be a reduction
24 in discharge flow by the treatment plant into the
25 Bay.

1 MR. HARRIS: So the use of that water
2 benefits the City in meeting its obligations for
3 its discharge to the Bay, is that correct?

4 MR. RICHARDSON: That's correct.

5 MR. HARRIS: I want to talk about the
6 South Bay Recycling Project, as well. Did you
7 analyze the impacts of the project on that system?

8 MR. RICHARDSON: Yes. Due to
9 evaporation of the water, the salts in the
10 recycled water get sent back, conveyed back to the
11 City. The concentration of salinity of the
12 recycled water product and the recycled water that
13 goes discharged to the Bay would increase by an
14 average of about 2 percent with a maximum of
15 approximately 3 percent.

16 Over 95 percent of the salt that Metcalf
17 discharges actually comes from the source water,
18 the recycled water. We have evaluated the impacts
19 and have found no significant environmental impact
20 on the South Bay Water Recycling product.

21 The concern about marketability of the
22 South Bay Water recycling water for future
23 customers has been raised. And what our analysis
24 is that the marketability is actually enhanced as
25 Metcalf increases the demand for that product, and

1 hence, the size of the market by at least 33
2 percent more, even more than that during the times
3 of the year when the City is not irrigating as
4 much water. In fact, during the wintertime the
5 Metcalf use would dominate the overall system use.

6 The City's own EIR for South Bay Water
7 Recycling has anticipated increasing levels of
8 salinity and has proposed general approaches to
9 manage salinity of the recycled water product.
10 The salinity projected as a result of Metcalf is
11 well below the level anticipated and analyzed in
12 the City's EIR.

13 Presently the City has identified
14 options to handle salinity. First, pretreatment,
15 which they have analyzed and concluded would
16 likely, or would result in a zero discharge
17 system.

18 Or centralized treatment to reduce the
19 overall South Bay Water Recycling system salinity.
20 Any limits or fees as a result of the City's
21 program would go into their industrial discharge
22 permitting process for their industrial customers.

23 And our conclusion is that pretreatment
24 is illogical because there is nothing in the water
25 that can be removed and disposed of that has been

1 raised as a concern without going to a zero
2 discharge system. That's why pretreatment would
3 lead to the logical conclusion of zero discharge
4 system.

5 MR. HARRIS: That's a lot of information
6 so I want to go back and highlight a couple
7 things. You talked about concentration. What was
8 the number on the concentration of salt?

9 MR. RICHARDSON: The concentration of
10 the current South Bay Water Recycling product is
11 782 mg/liter. It's projected worse case to
12 increase by 3 percent as a result of the Metcalf
13 project, to 803 mg/liter.

14 MR. HARRIS: And you've analyzed the
15 impacts of that increase and found them not to be
16 significant?

17 MR. RICHARDSON: That's correct.

18 MR. HARRIS: And in terms of how much
19 salt load the facility actually adds, the number I
20 think you said was 5 percent of the total, is that
21 correct?

22 MR. RICHARDSON: Yes, 95 percent of the
23 salt comes from the recycled water, itself, so
24 Metcalf Energy Center would add 5 percent.

25 MR. HARRIS: So 95 percent of that is in

1 the source water that you receive from South Bay?

2 MR. RICHARDSON: That's correct.

3 MR. HARRIS: Okay. Moving on to the
4 issue of flooding. Can you give us a brief
5 summary on that issue, as well?

6 MR. RICHARDSON: The site is in the
7 north end of Coyote Valley adjacent to Fisher
8 Creek. The site would be built up out of the 100
9 year flood plane. And we've analyzed the flood
10 conditions both pre- and post-project.

11 MR. HARRIS: And what were your
12 conclusions?

13 MR. RICHARDSON: There is no significant
14 impact of the project on either the water surface
15 level or the velocity of the flows in Fisher Creek
16 during a 100-year flood event.

17 MR. HARRIS: Did you have a chance to
18 analyze the project in terms of its compliance
19 with applicable laws, ordinances, regulations and
20 standards?

21 MR. RICHARDSON: Yes. And we have found
22 all LORS to be met, including the industrial waste
23 discharge regulations, which are City ordinance
24 number 24800 for discharge to the City's sewer and
25 the treatment plant.

1 MR. HARRIS: And did you also perform an
2 analysis of the potential groundwater impacts of
3 the project?

4 MR. RICHARDSON: Yes. We found them to
5 be insignificant under normal operation. Also
6 insignificant impact under the scenario of a
7 recycled water shutdown and pumping of
8 groundwater, even in drought year conditions.

9 MR. HARRIS: And you analyzed, as well,
10 the sewer impacts of the project?

11 MR. RICHARDSON: We found them to be
12 insignificant. The City has a reimbursement
13 formula to pay for the use of its sewer system in
14 the Coyote Valley.

15 MR. HARRIS: And what's your ultimate
16 conclusion here of the project?

17 MR. RICHARDSON: In conclusion, there
18 are no significant cumulative environmental
19 impacts. And, in fact, there are significant
20 environmental and economic benefits due to the
21 reduced discharge to the South Bay.

22 MR. HARRIS: Okay, thank you. I'd, at
23 this point, like to ask the other witnesses to
24 briefly summarize their testimony, two or three
25 bullet points. And I think I'd like to start with

1 Dr. Dickey on the soils issue.

2 So, can you summarize the main points of
3 your testimony very briefly?

4 DR. DICKEY: I looked at soils,
5 agriculture and salinity. My findings relative to
6 those three topics are that first of all we
7 analyzed the routes and the site for the MEC, that
8 is the linear routes, with regard to soils and
9 agricultural land mapping. We found no
10 significant impacts related to soil erosion or to
11 agricultural lands.

12 Secondly we considered worst case water
13 quality projections for changes in recycled water
14 quality, those that Dave just discussed, which
15 would be 3 percent increase in salt concentration
16 in the recycled water.

17 We considered the uses to which that
18 water is put. And the water quality control plant
19 discharge permit. Impacts to the soil of that
20 recycled water change, that marginal change, was
21 negligible to groundwater, negligible to plants
22 irrigated with the water, also negligible. No
23 significant environmental impacts were detected in
24 MEC's projected use of recycled water.

25 Third, we determined full compliance

1 with LORS related to soil erosion, prime ag land
2 and recycled water use would result from the
3 planned MEC project.

4 MR. HARRIS: So, with respect to the
5 soils issue you found no significant impacts?

6 DR. DICKEY: No significant impacts,
7 yes.

8 MR. HARRIS: Thank you. I'd like to ask
9 Dr. Earl Byron to briefly summarize his testimony.

10 MR. BOYD: I have a question.

11 MR. HARRIS: Yes.

12 HEARING OFFICER VALKOSKY: What, Mr.
13 Boyd? This is direct testimony.

14 MR. BOYD: You're changing subjects.
15 You're going from one speaker to another, and when
16 we cross-examine are we going to have an
17 opportunity to cross-examine individually or as a
18 group?

19 HEARING OFFICER VALKOSKY: You can
20 address your questions to the group, and --

21 MR. BOYD: Okay.

22 HEARING OFFICER VALKOSKY: -- the
23 appropriate witness will respond.

24 MR. HARRIS: We plan to --

25 MR. BOYD: -- question all the witnesses

1 is what I'm asking.

2 HEARING OFFICER VALKOSKY: Mr. Boyd, I
3 gave you the answer. Let Mr. Harris continue with
4 his direct.

5 MR. HARRIS: Dr. Byron, would you please
6 summarize your testimony?

7 DR. BYRON: Yes. I looked at surface
8 water discharge. Specifically I reviewed the
9 potential of the project to cause impact to the
10 surface water quality in the area and reviewed all
11 applicable LORS.

12 In contrast, of course, to many power
13 plant projects, the Metcalf project does not
14 propose to use, nor to discharge to local surface
15 water. Therefore, the only real potential for
16 discharge impact to surface water is during
17 construction and later during operations through
18 storm water discharge.

19 Those potential impacts are completely
20 mitigated through adherence of the National
21 Pollution Discharge Elimination System Procedure,
22 the permitting procedure for both construction and
23 storm water operations best management practices.

24 And we have prepared and docketed two
25 storm water pollution prevention plans that

1 address both construction and operational storm
2 water impacts.

3 MR. HARRIS: Thank you. And I'll ask
4 Mr. Everett to briefly summarize his testimony, as
5 well.

6 MR. EVERETT: My testimony is with
7 regard to the flood hydraulics of Fisher Creek.
8 I'd like to summarize it with three points.

9 Number one, all the Fisher Creek flood
10 studies were performed using the Army Corps of
11 Engineers flood hydraulic model HEC2. HEC2 is
12 considered to be the industry standard to evaluate
13 flood hydraulics of creeks, streams, rivers
14 throughout the United States.

15 It's also used exclusively by FEMA to
16 determine flood plane mapping and to determine
17 flood insurance rate information.

18 Number two, both pre- and post-project
19 studies were performed to evaluate the 100 year
20 flood event, flood hydraulics event of Fisher
21 Creek. And upon review of the post-project model
22 results it was found that there were no impacts at
23 all to Fisher Creek, either to the elevations or
24 to the flow velocities.

25 The third point is the Santa Clara

1 Valley Water District was involved throughout the
2 process, in the performance of all the studies.
3 The final results were reviewed and approved by
4 the District as evidenced by their July 6, 2000
5 letter to CEC.

6 MR. HARRIS: Thank you, Mr. Everett.
7 Ms. Pezzetti, please.

8 MS. PEZZETTI: My testimony involves the
9 groundwater and how Metcalf Energy Center's use of
10 groundwater would affect the basin.

11 The Coyote Valley groundwater basin's
12 annual budget is over 5 billion gallons per year.
13 The effect on the basin of the Metcalf Energy
14 Center was evaluated by preparing a groundwater
15 budget and by developing a three-dimensional
16 numeric groundwater model.

17 Extensive data for this model were
18 supplied by Santa Clara Valley Water District who
19 then reviewed the model and is supportive of our
20 conclusions.

21 Because of the uncertainty of the
22 frequency of the use of groundwater by Metcalf to
23 meet backup demands, there was some extremely
24 conservative estimates used in our evaluation.
25 This included one 30-day interruption in South Bay

1 Water Recycling, and five 72-hour interruptions.

2 South Bay Water Recycling anticipates
3 that with this current reliability and planned
4 improvements, future outages will be on the order
5 of a single 72-hour interruption.

6 Our findings indicated that even with
7 extremely conservative backup groundwater
8 assumptions Metcalf Energy Center's impacts to the
9 groundwater basin are not significant because of
10 the District's ability to manage the basin.

11 The District, as the basin manager,
12 indicated its commitment to working with existing
13 and planned groundwater users to appropriately
14 manage the Coyote Valley basin in accordance with
15 its integrated water resources plan.

16 Furthermore, there is no significant
17 difference between Metcalf Energy Center and CVRP
18 operating together versus CVRP operating alone.
19 This is because Metcalf Energy Center will bring
20 recycled water to the Coyote Valley, and it's
21 estimated that 30 percent of CVRP's water demands
22 can be met using recycled water.

23 MR. HARRIS: Thank you. Mr. Richardson,
24 I want to return to you on behalf of the panel,
25 again, and ask you about the final staff

1 assessment.

2 Have you had a chance to review that
3 final staff assessment?

4 MR. RICHARDSON: Yes.

5 MR. HARRIS: Have you reviewed the
6 conditions of certification in that staff
7 assessment?

8 MR. RICHARDSON: Yes.

9 MR. HARRIS: And are those conditions
10 acceptable to you and the panel?

11 MR. RICHARDSON: Yes.

12 MR. HARRIS: Thank you. I would like to
13 now have Mr. Ken Abreu present our testimony, our
14 rebuttal testimony.

15 Mr. Abreu, did you receive and analyze
16 the City of San Jose's testimony regarding water
17 resources?

18 MR. ABREU: Yes.

19 MR. HARRIS: And can you provide us with
20 your summary of that rebuttal testimony?

21 MR. ABREU: I would say that the key
22 point was that the CEC should assume that the City
23 will cooperate in supplying water and sewer
24 services to Metcalf if the CEC provides an
25 override for the project.

1 This is based on the fact that for the
2 CEC to do that they will show that Metcalf Energy
3 Center is required, for public convenience and
4 necessity, that there's not a more prudent and
5 feasible means to achieve that. And that under
6 the mandate of the state, through the Commission,
7 to maintain a safe and reliable electric supply
8 for the health, safety and welfare of the people
9 and the state economy that the project is needed.

10 And so it's reasonable to assume that
11 they would --

12 MR. BOYD: I would object to that.

13 MR. RICHARDSON: -- meet our
14 requirements.

15 HEARING OFFICER VALKOSKY: Overruled.

16 MR. WILLIAMS: Let the record show Mr.
17 Williams also objects.

18 HEARING OFFICER VALKOSKY: And let the
19 record reflect that's also overruled.

20 MR. WILLIAMS: Thank you, sir.

21 MR. HARRIS: Before making our witnesses
22 available for --

23 HEARING OFFICER VALKOSKY: I'm sorry,
24 Mr. Harris, Mr. Abreu could you repeat about the
25 last 30 seconds of your testimonial summary? I

1 want it clear for everybody here what it was.

2 MR. ABREU: I'm not sure where the 30-
3 second mark went, so let me just do it again.

4 I said that the CEC should assume that
5 the City will provide water and sewer services for
6 the Metcalf Energy Center if the CEC approves our
7 project and overrides the land use decision as it
8 stands with the City.

9 This is because we should expect the
10 City to respect the fact that in that decision the
11 CEC would be stating that Metcalf is required for
12 public convenience and necessity. There's not a
13 more practical or prudent way to achieve that
14 public convenience and necessity.

15 And that through the mandate of the
16 state, and exercised through the Commission, to
17 maintain a safe and reliable electric supply to
18 provide for health, safety and welfare of the
19 people and the state economy, this project would
20 be needed.

21 On that basis we believe that the City
22 would act responsibly and provide us water and
23 sewer.

24 HEARING OFFICER VALKOSKY: Thank you.

25 MR. WILLIAMS: And, again, the reason

1 for my objection is the statement at this time is
2 based on facts not in evidence --

3 MR. HARRIS: I'm going to object to --

4 MR. WILLIAMS: -- and it should be --

5 MR. HARRIS: -- Mr. Williams --

6 MR. WILLIAMS: -- restricted to only --

7 MR. HARRIS: -- testifying at this

8 point --

9 MR. WILLIAMS: -- water resources --

10 HEARING OFFICER VALKOSKY: Mr. Williams,
11 you are out of order.

12 MR. WILLIAMS: I'm sorry.

13 MR. BOYD: We can't state the grounds
14 for our objection?

15 HEARING OFFICER VALKOSKY: Mr. Harris,
16 continue.

17 MR. HARRIS: I'm largely finished. I'd
18 like to move our documents into evidence, we
19 didn't do that, if we could.

20 HEARING OFFICER VALKOSKY: Okay.

21 MR. HARRIS: I'd like to move, as a
22 group, the water resources portion of our 2A
23 testimony, which is exhibit 8. I'd also like to
24 move new exhibit 39, exhibit 41, 42, 43, 44, 45,
25 exhibit 48, 49 and 50. Exhibit 21, exhibit 15,

1 exhibit 54, 55 and 56. Exhibits 61, 62, 63, 64
2 and 65.

3 HEARING OFFICER VALKOSKY: Okay, is
4 there objection?

5 MR. WILLIAMS: There is a minor
6 objection by Robert Williams. I refer you --

7 HEARING OFFICER VALKOSKY: State your
8 objection.

9 MR. WILLIAMS: Yes, refer you to section
10 1704 of the Commission's siting regulations, page
11 23 in the copy that I have. Let me just read item
12 C: A list of all literature relied upon or
13 referenced in the documents." And then here is
14 the important part: Along with a brief discussion
15 of the relevance of such documents."

16 I don't want to stop the proceeding at
17 this point, but on virtually every subject we've
18 dealt with, Mr. Harris has submitted supplement A
19 and supplement C. And I would respectfully
20 request that these supplements are of the order of
21 200 pages each.

22 And under article 1704 of the siting
23 regulation he should state the portion of those
24 voluminous documents in this case that are
25 relevant to soil and water resources.

1 HEARING OFFICER VALKOSKY: Can you state
2 the page numbers?

3 MR. HARRIS: If you'll give us a minute
4 to pull the supplements --

5 MR. WILLIAMS: I'd be happy if that were
6 done tomorrow. I think the record just needs to
7 be corrected to show that.

8 HEARING OFFICER VALKOSKY: Okay, you can
9 do that after a break, and clarify the specific
10 pages.

11 MR. HARRIS: Well, let me ask is that
12 necessary, though? Can I move the entire
13 document?

14 MR. WILLIAMS: No, the record is being
15 padded and made unreasonably convoluted by
16 submitting --

17 HEARING OFFICER VALKOSKY: I understand
18 your position, Mr. Williams. Mr. Harris has
19 agreed to specify, as does staff, when they
20 sponsor their FSA, the particular portions of
21 those documents. We'll discuss that after the
22 break.

23 MR. WILLIAMS: Thank you.

24 HEARING OFFICER VALKOSKY: With that
25 understanding, is there any objection to receiving

1 into evidence the exhibits which Mr. Harris has
2 identified?

3 There's none? They're admitted.

4 MR. HARRIS: Thank you. I would like to
5 have our cross-examination directed through Mr.
6 Richardson. He's been the point on the project
7 for us, and also can tell us -- he may be able to
8 answer most of the questions, himself, or he can
9 point to the appropriate witness to answer those
10 questions.

11 So I'd like to have the cross directed
12 through Mr. Richardson.

13 HEARING OFFICER VALKOSKY: That's fine,
14 but to the extent he is unable to answer, the
15 understanding is that one of your other witnesses
16 will, is that correct?

17 MR. HARRIS: That's correct, sir.

18 HEARING OFFICER VALKOSKY: Good. Thank
19 you.

20 MR. HARRIS: Thank you.

21 HEARING OFFICER VALKOSKY: Before we
22 begin I have a couple of just general questions.
23 And these are just addressed to the panel at
24 large.

25 //

1 EXAMINATION

2 BY HEARING OFFICER VALKOSKY:

3 Q Is it your understanding that absent a
4 CEC override the City would be unlikely to supply
5 the project with water? Anyone?

6 MR. ABREU: We haven't assessed the
7 likelihood of that. The process we're going
8 through now would lead to a CEC decision that we
9 feel would lead to their providing the water, but
10 we haven't analyzed the case without it.

11 HEARING OFFICER VALKOSKY: Okay. Which
12 agreements from the City and/or County does the
13 project need to supply it with water and waste
14 disposal services?

15 MR. RICHARDSON: I'd like to defer that
16 to Kris Helm.

17 MR. HELM: We would need a recycled
18 water use permit. We would need an industrial
19 waste discharge permit. And if the City chose to
20 be the supplier of potable water, we would need a
21 service agreement for the potable water source.

22 HEARING OFFICER VALKOSKY: You would
23 also need an agreement with the South Bay Water
24 Recycling program. Is that done through the City
25 or is that a special --

1 MR. HELM: Right, the City operates as
2 the trustee for the South Bay Water Recycling.

3 HEARING OFFICER VALKOSKY: Okay. And is
4 my understanding correct that none of those
5 permits that you referenced have yet been
6 obtained, or the agreements, I'm sorry, not the
7 permits, the agreements for those services have
8 not yet been obtained?

9 MR. HELM: Correct.

10 HEARING OFFICER VALKOSKY: That is
11 correct, okay. You mentioned, one of you in the
12 testimony, I believe it was Mr. Richardson, about
13 applicant's analysis, marketability analysis in
14 view of the salinity.

15 Does the South Bay Water Recycling
16 program agree with that analysis? And the
17 benefits which you have concluded exist?

18 MR. RICHARDSON: I'd like to address the
19 technical side of that, and Kris Helm would be the
20 appropriate person to address the business
21 arrangement.

22 HEARING OFFICER VALKOSKY: Okay.

23 MR. RICHARDSON: From a technical
24 standpoint the South Bay Water Recycling Staff and
25 consultants have reviewed all of our technical

1 analysis relative to the quality of water, how it
2 complies with their current EIR. And have been in
3 general agreement with the analysis that we have
4 done.

5 The issue that they have raised is the
6 marketability of the South Bay Water Recycling
7 product, with that additional salinity, and
8 potentially the impact of marketability for future
9 customers, especially -- well, I'll leave it at
10 that. And refer to Kris Helm.

11 MR. HELM: Just to maybe expand on this,
12 I think that the City agrees with us, my
13 understanding is the City Staff would -- technical
14 staff would agree with us that the project is a
15 net benefit to the South Bay Water Recycling
16 program.

17 And in financial terms, perhaps we could
18 evaluate that and the project would definitely
19 operate net benefit. How that benefit is
20 translated to the contributors to the cost of the
21 South Bay Water Recycling program and the
22 customers of the South Bay Water Recycling
23 program, how that benefit would be translated to
24 those who pay the cost of the South Bay Water
25 Recycling program and the customers of the

1 recycling program is perhaps somewhat speculative.

2 But the benefit that would accrue to the
3 program is not speculative.

4 HEARING OFFICER VALKOSKY: Okay, but
5 there is no memorandum of understanding or some
6 sort of indication that there's been a meeting of
7 the minds as to the supply of the water, is that
8 correct?

9 MR. HELM: That's correct to some
10 extent. The City did not, staff did not want to
11 formalize any arrangements for service to the
12 Metcalf Energy Center prior to the City Council's
13 determination or action on the power plant.

14 So at the request of the City we
15 deferred those business and commercial
16 discussions.

17 HEARING OFFICER VALKOSKY: Okay. There
18 was mention of the Great Oaks Water District. Is
19 my understanding correct that Great Oaks would be
20 a potential supplier for potable water, if not for
21 the recycled process water?

22 MR. HELM: Great Oaks has indicated a
23 willingness to provide either type of water
24 service.

25 HEARING OFFICER VALKOSKY: Okay, have

1 any negotiations been concluded with Great Oaks
2 for providing water service?

3 MR. HELM: No. Again, at the request of
4 the City we deferred conclusion of business
5 negotiations with any party on this water service.

6 PRESIDING MEMBER LAURIE: Let me direct
7 my questions to Dr. Richardson -- or Mr.
8 Richardson.

9 MR. RICHARDSON: Thank you.

10 PRESIDING MEMBER LAURIE: But you're in
11 excellent companies here.

12 (Laughter.)

13 PRESIDING MEMBER LAURIE: And to the
14 extent necessary you can ask your colleagues. To
15 what extent in preparation of Metcalf's water plan
16 did you examine the water plan for CVRP?

17 MR. RICHARDSON: In developing the water
18 plan for the Metcalf Energy Center we were
19 initially generally aware of CVRP's planning
20 process. It was not until the CVRP environmental
21 documents were released that we had more specific
22 information on their water planning.

23 And we did get that information and in
24 fact analyzed the CVRP use of water in addition to
25 the Metcalf Energy Center use of water

1 specifically in consultation with the Energy
2 Commission Staff and the Santa Clara Valley Water
3 District in our analysis of impacts.

4 PRESIDING MEMBER LAURIE: And to what
5 extent is your plan compatible with CVRP's
6 approved plan? That is, is it consistent with one
7 another regarding infrastructure improvements,
8 regarding types of water being utilized, and for
9 what purposes.

10 MR. RICHARDSON: Well, the CVRP plan is
11 to use groundwater. And they have concluded
12 apparently arrangements with San Jose Muni Water
13 Company to use groundwater, to use groundwater
14 from the San Jose Muni wells that are in place in
15 Coyote Valley.

16 And we assumed in our analysis that CVRP
17 would, in fact, use those wells. And the Metcalf
18 Energy Center would have its own wells drilled.

19 So in that sense the use of potable
20 water, groundwater is consistent.

21 Relative to recycled water CVRP does not
22 contemplate using recycled water initially. They
23 have been required to put in pipelines for
24 distribution of future recycled water, but not to
25 bring the recycled water to the site.

1 So to the extent that Metcalf would
2 bring recycled water to Coyote Valley ten miles in
3 distance our plans for Metcalf would be consistent
4 with future CVRP use of recycled water.

5 PRESIDING MEMBER LAURIE: For
6 groundwater do you require any agreement with CVRP
7 for easement purposes of otherwise?

8 MR. RICHARDSON: Our understanding of
9 agreements relative to routing pipelines, routing
10 service pipelines from the potable water purveyor
11 is that we would obtain those easements in
12 cooperation and conjunction with San Jose Muni, if
13 they were the water provider, or Great Oaks if
14 they were the municipal water provider.

15 PRESIDING MEMBER LAURIE: So the entity
16 would actually have condemnation powers as might
17 be necessary? Is that the idea?

18 MR. RICHARDSON: That's correct.

19 PRESIDING MEMBER LAURIE: Thank you.

20 MR. HELM: If I could just expand on
21 that, my understanding of the Warren Alquist Act
22 is also that the determination by the CEC of a
23 final staff assessment would constitute a finding
24 of public necessity should condemnation be
25 necessary.

1 PRESIDING MEMBER LAURIE: Thank you.

2 HEARING OFFICER VALKOSKY: If
3 hypothetically the Energy Commission were to
4 certify as acceptable the Metcalf Energy Center
5 what would then be the next steps the applicant
6 would take to obtain water for the project?

7 MR. RICHARDSON: Mr. Abreu would be
8 qualified to answer that.

9 MR. ABREU: We would go to the City and
10 request the water and sewer service.

11 HEARING OFFICER VALKOSKY: And is it
12 your understanding that the decision to grant that
13 water and sewer service would nevertheless remain
14 a discretionary act by the City?

15 In other words, is it your understanding
16 that the City would be required to grant you water
17 and sewer service, or could, at their discretion,
18 decline to grant you water and sewer service?

19 MR. RICHARDSON: That's a legal question
20 but we believe that they would be required.

21 HEARING OFFICER VALKOSKY: Okay, that is
22 your position, that the City would be required.
23 Okay.

24 One of you also mentioned that
25 pretreatment of the wastewater was not necessary.

1 Does the City agree with your conclusions in that
2 regard?

3 MR. RICHARDSON: I'd like to answer that
4 question by referring to a document that we have
5 discussed today. And that document is the memo
6 from Randy Shipes to Rich Buikema regarding the
7 Energy Center. It's exhibit number 65.

8 HEARING OFFICER VALKOSKY: Okay.

9 MR. WILLIAMS: Dated what date, please?

10 MR. RICHARDSON: November 7, 2000.

11 MR. WILLIAMS: Thank you.

12 MR. HARRIS: By way of clarification
13 it's the last document in the package that we gave
14 the intervenors and the parties today.

15 MR. WILLIAMS: Thank you.

16 MR. RICHARDSON: As I understand the
17 memo, it concludes by finding as it analyzes the
18 options for addressing the salinity question that
19 either the applicant would operate a zero
20 discharge cooling system where the cooling tower
21 effluent is treated and reused in the cooling
22 towers and there's no discharge, or the applicant
23 would be required to treat the discharge such that
24 the TDS or salt concentrations do not exceed that
25 of South Bay Water Recycling water.

1 Doing this, Mr. Shipes right, would
2 functionally mean the Metcalf Energy Center would
3 treat their wastewater to a quality comparable
4 with their cooling source water. It reasonably
5 follows that Metcalf Energy Center would elect to
6 reuse that water rather than discharge it. This
7 option then becomes effectively the same as a zero
8 discharge option.

9 And in the third option that Mr. Shipes
10 identifies is the City provides additional
11 treatment at its central treatment facility by its
12 wastewater treatment plant prior to delivering
13 South Bay Water Recycling to anyone to reduce the
14 salt level of the product. And then he goes on to
15 say as the South Bay Water Recycling program
16 expands the use of recycled water for cooling and
17 other industrial purposes, the issue of rising TDS
18 levels becomes increasingly important.

19 And that the use of additional treatment
20 to lower the salinity of South Bay Water Recycling
21 water would likely make the water more attractive
22 for other uses as well. Example, stream --
23 augmentation, increased industrial use. Such a
24 treatment system, however, is capital intensive,
25 and would require funding.

1 HEARING OFFICER VALKOSKY: Okay, so as I
2 understand it the City is apparently putting out
3 three options, is that a correct interpretation of
4 what you just read?

5 MR. RICHARDSON: Yes, and condensing the
6 first two down to one.

7 HEARING OFFICER VALKOSKY: Right. And
8 my question is which option would applicant
9 pursue?

10 MR. RICHARDSON: I'll let -- Kris Helm
11 is qualified to address that question, I believe.

12 MR. HELM: We have done some preliminary
13 engineering evaluations of the preferred method of
14 reducing salt on the South Bay Water Recycling
15 system. And although we have not determined, and
16 it was beyond the scope to determine the most
17 effective means of addressing salinity concerns on
18 the South Bay Water Recycling system, we did do
19 comparisons of the cost of pretreatment at the
20 Metcalf Energy Center compared to the costs of a
21 centralized desalter at the intake of the South
22 Bay Water Recycling system.

23 And it appears that it would be three to
24 ten times more cost effective to address this at
25 the head of the South Bay Water Recycling system.

1 And so if the City were to go through an
2 evaluation in accordance with normal accepted
3 practices and its obligations under the National
4 Pollution Discharge Elimination System to
5 establish regulations for pretreatment, it is
6 illogical to assume that they would conclude that
7 pretreatment of the Metcalf Energy Center would be
8 the preferred method of addressing salinity.

9 HEARING OFFICER VALKOSKY: Okay. So
10 what you're saying is that you would either
11 contribute to a centralized treatment or go to a
12 zero discharge system?

13 MR. HELM: Indeed, we have offered
14 informally to the City in writing to construct a
15 central desalter plant at the head of the South
16 Bay Water Recycling plant if the City were willing
17 to consider the cost of benefits of that proposal
18 in assessing our development impact fees.

19 HEARING OFFICER VALKOSKY: Okay, thank
20 you. How about the zero discharge option?

21 MR. HELM: We would not support the zero
22 discharge option. It's economically inefficient.

23 HEARING OFFICER VALKOSKY: Okay. Is my
24 understanding correct that it is technically
25 feasible?

1 MR. RICHARDSON: I think Ken Abreu is
2 qualified to answer this question.

3 MR. ABREU: We've looked at the project
4 and determined that the use of recycled water
5 discharged to the City is the best for us and best
6 for the city overall.

7 Going to a zero discharge option doesn't
8 make optimal economic sense either for us or the
9 City. Technically one can do zero discharge
10 systems.

11 HEARING OFFICER VALKOSKY: Okay, so
12 technically that is feasible. Okay, thank you.

13 Can any of the witnesses respond to
14 questions concerning the cooling system used for
15 the project?

16 MR. ABREU: Yes, sir.

17 HEARING OFFICER VALKOSKY: Okay. Is
18 this a wet cooling system or is it a wet/dry
19 hybrid cooling system?

20 MR. RICHARDSON: It's a wet cooling
21 system. With -- let me refer this to Ken, go
22 ahead, Ken.

23 MR. ABREU: We also have a plume
24 abatement system on it, which is a dry system, as
25 part of the system, so it's wet/dry.

1 HEARING OFFICER VALKOSKY: Okay, now is
2 it possible to give me a percentage, 90 percent
3 wet, 10 percent dry? Or is that just not
4 appropriate for your type of system?

5 MR. ABREU: I don't know the answer to
6 that question.

7 HEARING OFFICER VALKOSKY: Okay.

8 MR. ABREU: It's predominately a wet
9 system. The dry part is only for plume abatement.

10 HEARING OFFICER VALKOSKY: Okay, thank
11 you.

12 MR. WILLIAMS: Mr. Valkosky, point of
13 clarification. Is the cooling tower a subject of
14 the testimony today?

15 HEARING OFFICER VALKOSKY: Not the
16 cooling tower structure, the cooling process, the
17 water used in the cooling process.

18 MR. WILLIAMS: Thank you, yes.

19 MR. ELLISON: Mr. Valkosky, Chris
20 Ellison for the applicant. As long as we're
21 clarifying things, let me clarify something, as
22 well.

23 You asked earlier about which of the
24 three options in Mr. Shipes' memo would be pursued
25 by the applicant. I do want to make clear that

1 the applicant's belief, and our testimony today,
2 is that none of those three options are necessary.

3 Mr. Shipes' memo assumes that the 3
4 percent increase in salinity is a problem which is
5 not the applicant's position. However, if it
6 turned out that it were a problem and the City
7 determined that something needed to be done, then
8 the applicant's belief is that the most cost
9 effective choice is the third option treatment at
10 the site of the recycling plant.

11 But I do want to emphasize that there
12 are four options on the table, not three.

13 HEARING OFFICER VALKOSKY: Okay, thank
14 you for that clarification. I was just attempting
15 to get to the point that it seems that there's at
16 least a potential disagreement between the City
17 and the applicant. I was just trying to get a
18 feeling for what could happen. Thank you.

19 Ms. Willis.

20 MS. WILLIS: Thank you.

21 CROSS-EXAMINATION

22 BY MS. WILLIS:

23 Q The questions that I have are mostly for
24 clarification purposes, so some of them may seem a
25 little bit elementary.

1 Mr. Richardson, I believe you testified
2 that recycled water is available?

3 MR. RICHARDSON: Yes.

4 MS. WILLIS: Is it your testimony that
5 recycled water is at this particular time
6 available to the Metcalf project?

7 MR. RICHARDSON: Yes.

8 MS. WILLIS: In the event that the
9 applicant does not reach an agreement for water
10 supply, have you analyzed the feasibility and
11 environmental impacts of using alternative cooling
12 methods such as dry cooling for the cooling
13 supply?

14 MR. RICHARDSON: The environmental
15 impacts of dry cooling, I don't believe so, no.

16 MS. WILLIS: How about groundwater?

17 MR. RICHARDSON: Groundwater --

18 MS. WILLIS: Not for backup or potable,
19 but for the main source.

20 MR. RICHARDSON: No.

21 MS. WILLIS: Are the well locations
22 indicated in the groundwater supply plan the
23 infrastructure the applicant plans to construct
24 for potable water supply?

25 MR. RICHARDSON: We analyzed the

1 infrastructure needs by the way of pipelines and
2 wells, so that we could analyze the impacts of the
3 construction of those facilities and the operation
4 of those facilities.

5 In discussions with the water company,
6 San Jose Muni and Great Oaks Water, indicate that
7 normally those facilities would be constructed by
8 the municipal water -- or the potable water
9 purveyor.

10 MS. WILLIS: I guess my question is if
11 this project is approved, will the well locations
12 identified in the groundwater supply plan be the
13 location that you intend to build those wells?

14 MR. RICHARDSON: In our analysis, or
15 preparing for the analysis of the impacts of the
16 well construction, pipeline construction and
17 operation of the system we conferred with both the
18 City of San Jose Muni Water Company, muni water,
19 and with Great Oaks Water Company, and also with
20 the Santa Clara Valley Water District relative to
21 the location of the wells.

22 And all technical parties concurred that
23 those were logical and appropriate locations for
24 the wells. So we anticipate that the wells will
25 be constructed in approximately those locations.

1 MS. WILLIS: And by approximately can
2 you define that term as far as distance?

3 MR. RICHARDSON: Not precisely. Our
4 analysis of the groundwater basin would indicate
5 that the wells could be located within plus or
6 minus 500 feet of those locations, and the impacts
7 would be -- have been analyzed to that level of
8 detail.

9 MS. WILLIS: I'd like to refer now to
10 the water resources rebuttal testimony from Mr.
11 Abreu and Mr. Helm.

12 Mr. Helm, there's a list of your
13 experience and qualification. Can you tell me if
14 you've been involved in developing or implementing
15 any of the City of San Jose or the South Bay Water
16 Recycling rules or regulations?

17 MR. HELM: No, I've not been involved in
18 implementing those rules and regulations.

19 MS. WILLIS: It appears that your
20 experience is mostly in southern California, is
21 that correct?

22 MR. HELM: Primarily, yes.

23 MS. WILLIS: On page 1 at the bottom,
24 under part A, under number 2, rebuttal testimony,
25 the fourth line down starts: In fact, if approved

1 by this Commission MEC would be a fully lawful use
2 within the urban service area of the City of San
3 Jose."

4 Mr. Abreu or Mr. Helm, could you please
5 define for me what the term lawful use means? And
6 what I'm asking for is which laws are you
7 referring to? State, federal, local or otherwise?

8 MR. HELM: My understanding is that
9 would be with respect to all those, all of the
10 above.

11 MS. WILLIS: I'm asking what ordinances
12 or local laws then in the City of San Jose would
13 this be a lawful use, in light of the City
14 Council's vote at this point?

15 MR. HELM: Our land use witnesses may be
16 in a better position to answer all those questions
17 than I am. With respect to what the CEC's
18 potential override determination of the
19 appropriateness of this land use would be.

20 MS. WILLIS: Well, it seems to be
21 something that's been brought up in this testimony
22 and I'm going to be addressing it again, so I hope
23 you'll be able to answer some of these questions.

24 On this next page, on page 2, and this
25 is just because I don't quite understand what the

1 sentence means. Starting with: As a result, you
2 talk about Mr. Shipes' analysis of the City's
3 obligation, his review of past City decisions, and
4 his speculation as to future decision assumes the
5 way the impact of the Energy Commission's decision
6 and addresses a false, quote, "strawman",
7 irrelevant to this proceeding."

8 Could you explain to me what a strawman
9 is in this sentence? What it means in this
10 sentence?

11 MR. HELM: We're referring to a set of
12 circumstances and a reality that is posed within
13 itself and may or may not reflect reality as it
14 exists after the Commission acts.

15 MS. WILLIS: So how would Mr. Shipes'
16 analysis be irrelevant to this proceeding?

17 MR. HELM: Sorry, I missed the question?

18 MS. WILLIS: How would Mr. Shipes'
19 analysis, how is that irrelevant to this
20 proceeding?

21 MR. HELM: You said how is it relevant,
22 or --

23 MS. WILLIS: Irrelevant, as your
24 testimony states.

25 MR. HELM: In speculating on what the

1 future action of a future city council would be,
2 following the action of the CEC, I think is
3 inappropriate. For example, Mr. Shipes' testimony
4 uses a logical string of events to conclude that
5 the City would not annex this property into the
6 City following an action by the CEC.

7 And my understanding of the basis of the
8 City's rejection of the Metcalf Energy Center
9 pertained to zoning, and the land use of the
10 facility. But that the City has, in fact,
11 indicated an intent to provide services to this
12 location, and to annex it.

13 MS. WILLIS: Well, thank you. Can you
14 point to a document or testimony that would
15 support that statement, that the City has provided
16 intent to provide services to the Metcalf
17 facility, or to annex the property?

18 MR. HELM: Yes, I would. I think
19 counsel is holding copies of page 53 and 54 of the
20 City's general plan for 2020, which provides
21 perhaps a helpful narrative --

22 MS. WILLIS: Actually, no, that's not
23 what I'm referring to. I'm referring to something
24 that would be particular to your project, the
25 property in question, and following the city

1 council's vote that denied zoning and the general
2 plan amendment application proposed by the Metcalf
3 Energy Center applicants.

4 MR. HELM: In 1970 the City applied to
5 LAFCO to designate a portion of the Metcalf site
6 that is not --

7 PRESIDING MEMBER LAURIE: Let me
8 interrupt, sir. The question is not your argument
9 in favor of annexation and City services, or
10 whether there should be general plan amendments or
11 rezoning. The question is you have testified that
12 you have reason to believe that should the Metcalf
13 project be approved that the City will provide
14 service.

15 Counsel's asking for any documentation
16 that provides such assurances, if any you have
17 today.

18 MR. HELM: Right, and we would -- I
19 believe that the general plan of the City
20 indicates their service policies relative to the
21 urban service area and their applications to LAFCO
22 and the subsequent resolution of LAFCO to accept
23 that designation of service territory is based on
24 the premise that the City will annex this
25 territory and provide city services.

1 So I would suggest that that is evidence
2 of that, of the City's intent to do so.

3 MS. WILLIS: Okay, Mr. Helm, your
4 testimony at this point is that you're referring
5 to the general plan. But you don't have any
6 specific documents either addressed to a member of
7 your team that says, from the City, that they
8 intend to provide city services to this project,
9 or that they will annex the land and the project
10 site?

11 MR. HELM: Yes, I think other than the
12 designation of this as urban service territory and
13 the state -- and the policy of what that means of
14 intent to provide service, I'm not aware of other
15 specific reference to the property in question and
16 the City's intent to provide service.

17 MS. WILLIS: Let me ask you a question
18 on the urban service area issue. Is it your
19 testimony that the City is required to provide, I
20 guess any project, or your project in particular,
21 reclaimed water along a ten-mile pipeline?

22 MR. RICHARDSON: I'd like to address at
23 least the intent question. Through all of our
24 discussions with City Staff, they have -- staff
25 has repeatedly required, stated that they would

1 require the Metcalf Energy Center to use recycled
2 water as its primary cooling water supply.

3 MS. WILLIS: That's not my question. My
4 question is is the City required, or can you point
5 me to an authority that states that the City is
6 required to provide the proposed Metcalf Energy
7 Center project on land that at this point that is
8 not annexed to the City, reclaimed water?

9 MR. HARRIS: I want to object on the
10 basis she's asking for a legal conclusion.

11 MS. WILLIS: I'm sorry, but that's in
12 the testimony --

13 HEARING OFFICER VALKOSKY: Objection
14 overruled. The witness should answer the
15 question.

16 MR. HELM: I'm not aware of a
17 requirement within the City code that would
18 require that.

19 MS. WILLIS: Thank you. Mr. Abreu, is
20 it your testimony that if the Energy Commission
21 does override the City, and approves this project,
22 that the City would be legally or otherwise
23 obligated to annex the property?

24 I'm talking about the part of the
25 Metcalf proposed site that is part of the

1 unincorporated area.

2 PRESIDING MEMBER LAURIE: Ms. Willis,
3 are you making reference to statements about
4 annexing or providing service, because they could
5 theoretically be different.

6 MS. WILLIS: That's correct. I'm
7 talking about annexation at this point.

8 MR. ABREU: I don't have a personal
9 opinion on the annexation question. That's a
10 legal question.

11 MS. WILLIS: Does anyone on your team
12 have an answer for that question?

13 MR. RICHARDSON: Not this team up here.

14 (Laughter.)

15 MS. WILLIS: Mr. Abreu, if I understand
16 your answers to Mr. Valkosky's questions regarding
17 the hypothetical of an override, I believe you
18 stated that the City would be required to provide
19 the services to the project, is that correct?

20 PRESIDING MEMBER LAURIE: If I may
21 interrupt for a second. I'm going to have a chat
22 with my Hearing Advisor. Please, sir, do not
23 answer the question yet.

24 (Pause.)

25 PRESIDING MEMBER LAURIE: Ms. Willis,

1 what we're trying to avoid is discussion at this
2 point in time about whether or not there should be
3 override, the likelihood of override, the
4 unlikelihood of override.

5 If you want to ask questions about
6 hypotheticals and making assumptions, assume
7 either override or assume either no override, and
8 then ask for probability or likelihood or
9 possibility of services, given those
10 hypotheticals.

11 MR. BOYD: Can intervenors ask why that
12 is? Why you don't want to talk about override now
13 instead of later?

14 PRESIDING MEMBER LAURIE: No, sir. No.
15 That's the determination of the Committee.

16 MR. BOYD: We have --

17 PRESIDING MEMBER LAURIE: First of all,
18 it --

19 MR. BOYD: -- determination. Let the
20 record reflect that, please. And we have a
21 petition before the full Commission --

22 PRESIDING MEMBER LAURIE: Mr. Boyd,
23 fine, so noted. And you don't have to note it
24 again for the record, thank you.

25 MR. BOYD: Thank you.

1 PRESIDING MEMBER LAURIE: Ms. Willis.

2 MS. WILLIS: Thank you. I actually did
3 want to avoid the issue of override and some of
4 the definitions that were, or requirements that
5 were provided by Mr. Abreu.

6 But I would like to ask if anybody on
7 the team, or particularly Mr. Abreu and Mr. Helm,
8 has reviewed the City ordinance, San Jose
9 Municipal Code section 15.08.300 connections for
10 property location outside water service area.

11 That was included in Mr. Shipes'
12 testimony.

13 I'm sorry, I don't hear an answer.

14 MR. HELM: Yes.

15 MS. WILLIS: And is it still your
16 testimony that the City supplying services outside
17 their area would not be discretionary in the event
18 that this project would be approved?

19 MR. HELM: I don't believe it is my
20 testimony that it would not be a discretionary
21 action of the City to provide city services.
22 There are potential willing partners that the City
23 can work with, such as Great Oaks Water Company,
24 to accomplish such water service.

25 MS. WILLIS: Is Great Oaks a retailer of

1 reclaimed water at this time?

2 MR. HELM: Not at this time.

3 MS. WILLIS: Do you agree with Mr.
4 Shipes' testimony that it would be a discretionary
5 vote by the City Councils of either San Jose or in
6 another situation, City Councils of San Jose and
7 Santa Clara, to determine whether reclaimed water
8 would be supplied to the Metcalf project?

9 MR. HELM: I'm not certain it's within
10 the City's power to block Great Oaks provision of
11 recycled water service.

12 MS. WILLIS: And what do you base that
13 on?

14 MR. HELM: I said I'm not certain that
15 it is within their power. I would -- there are
16 state laws that would require agencies that have
17 capacity to wheel supplies through their system.
18 There are covenants that the City has to their
19 customers and their bondholders that may compel
20 this.

21 There are a number of reasons to suspect
22 and perhaps a number of causes of action that
23 could be brought to the City, some of which I'm
24 aware of, and some of which I'm not.

25 MS. WILLIS: So your testimony would be

1 that you cannot identify anything in particular,
2 but there are some things that you can speculate?
3 I'm talking about --

4 MR. HARRIS: I'm going to object to that
5 as argumentative.

6 MS. WILLIS: Well, I'm trying to --

7 HEARING OFFICER VALKOSKY: Sustained.
8 Rephrase the question.

9 MS. WILLIS: What I'm trying to find out
10 is if you know anything that pertains to this
11 project, and this South Bay Water Recycling
12 program.

13 MR. HELM: Well, I think the state laws
14 on wheeling and beneficial use of water would
15 apply, yes.

16 MS. WILLIS: Throughout this process the
17 applicant has indicated that they would identify
18 the purveyor of the water supply after the City
19 land use decisions were made.

20 Has the purveyor been identified as yet?

21 MR. ABREU: Ken Abreu. No.

22 MS. WILLIS: Regardless of a purveyor,
23 is the South Bay Water Recycling line the line
24 that will be constructed to serve this project?

25 MR. RICHARDSON: Yes.

1 MS. WILLIS: Have you entered into
2 negotiations with the City for the interconnection
3 agreements for sewage or water lines?

4 MR. HARRIS: Objection, that was asked
5 and answered previously.

6 MS. WILLIS: That was about water supply
7 agreements. We're talking about interconnection
8 agreements.

9 MR. HARRIS: I'll ask Mr. Valkosky to
10 rule because I believe he asked that.

11 HEARING OFFICER VALKOSKY: I'm not going
12 to sustain an objection on an asked-and-answered
13 basis. I think we need clarification. The
14 witness should answer the question.

15 MR. HELM: We have had discussions with
16 the City, but I wouldn't characterize those as
17 negotiations.

18 HEARING OFFICER VALKOSKY: So, okay, so
19 was the answer to the question that -- yes or no,
20 have these negotiations been entered into? The
21 negotiations to which Ms. Willis referred for the
22 interconnections.

23 MR. ABREU: I'd say the answer is yes,
24 but they have been limited because the City has
25 indicated they don't want to, you know, follow

1 them through to conclusion until they get a City
2 Council approval to do so.

3 HEARING OFFICER VALKOSKY: Thank you.
4 Proceed, Ms. Willis.

5 MS. WILLIS: And just for point of
6 clarification, does the applicant have a will-
7 serve letter from any purveyor for reclaimed
8 water?

9 MR. RICHARDSON: Hold on just a second.
10 (Pause.)

11 MR. RICHARDSON: We have indication from
12 the City of San Jose that if approved they will
13 issue -- if the project was approved by Council
14 they would issue a will-serve letter.

15 MS. WILLIS: And when you say approved,
16 could you be more specific?

17 MR. RICHARDSON: They weren't specific,
18 but our assumption was that it was based upon the
19 City Council decision on land use.

20 MS. WILLIS: And hasn't that vote taken
21 place already?

22 MR. RICHARDSON: Yes.

23 MS. WILLIS: And was the project
24 approved by the City Council?

25 MR. RICHARDSON: The general plan

1 amendment and rezoning was not approved.

2 MS. WILLIS: Does the applicant have an
3 application fort annexation before the City
4 Council at this time?

5 MR. ABREU: We did file for annexation.
6 I don't know if we've withdrawn it or not at this
7 point in time.

8 MS. WILLIS: So nothing pending in the
9 near future that you know of?

10 MR. ABREU: No.

11 MS. WILLIS: Are you intending to file
12 an application for annexation?

13 MR. ABREU: Our intent at this time is
14 to go through the CEC process. At the conclusion
15 of the CEC process we will go back to the City
16 with a lot more information than they had prior to
17 the City Council vote. And we'll pursue the city
18 services and so forth at that point in time.

19 MS. WILLIS: On the same line as the
20 will-serve letter, does the applicant have a will-
21 serve letter from either Great Oaks or any other
22 purveyor for potable water supply?

23 MR. RICHARDSON: Yes.

24 MS. WILLIS: And would that be from
25 Great Oaks?

1 MR. RICHARDSON: Yes.

2 MS. WILLIS: Okay. Thank you, that's
3 all.

4 PRESIDING MEMBER LAURIE: Mr.
5 Richardson, question regarding city services.
6 When you talk about future City action, is it your
7 understanding that in all City discretionary
8 actions, and I don't want to get into a debate
9 whether or not the provision of services is
10 discretionary or not, so let's say in all City
11 actions ultimately it's a determination by the
12 City Council that will determine whether or not
13 services are provided.

14 Would that be your understanding, that
15 the City Council would have ultimate jurisdiction
16 over all provision of services questions?

17 MR. RICHARDSON: To the extent that
18 that's not a legal question my answer would be
19 yes.

20 PRESIDING MEMBER LAURIE: Thank you.
21 Mr. Valkosky.

22 HEARING OFFICER VALKOSKY: Thank you.
23 Ms. Dent, cross on behalf of the City?

24 MS. DENT: My name is Mollie Dent. I'm
25 an attorney for the City of San Jose. I will

1 direct my questions to the panel, and let the
2 panel decide which member of the panel is
3 appropriate for answering the questions.

4 The questions will focus on water and
5 water service and wastewater disposal, and to a
6 minor extent also on storm water, just so that I
7 have an understanding of the project.

8 CROSS-EXAMINATION

9 BY MS. DENT:

10 Q First of all I just want to ask for
11 confirmation that there are three incoming water
12 systems that are proposed to serve this project,
13 and one outgoing water system, one wastewater
14 disposal system.

15 As I understand the documents that have
16 been filed, the proposal on the part of the
17 applicant is to use recycled water for 90 to 95
18 percent of the project's need for cooling tower
19 water.

20 The project will use municipal water
21 system water from a municipal water system well
22 for sanitary domestic water supply, and for some
23 process water. And there was an indication in
24 some of the documents that you would also be using
25 Great Oaks water supply water for backup, for

1 fire, for backup.

2 So I'm asking for some clarification on
3 all of the incoming water systems and specifically
4 when you're talking about the potable water, where
5 the wells are going to be located and who the
6 applicant thinks is going to operate those wells.

7 MR. RICHARDSON: Sure, I'll address
8 that. The first incoming water system is
9 anticipated to be the recycled water pipeline.

10 The second is anticipated to be a
11 potable water supply which would serve two
12 purposes. It would be the service of potable
13 water to the site, and process water to the site.
14 It would also provide the backup to cooling water
15 in case recycled water system was down.

16 Which entity provided that potable water
17 service is where we were not specific. We said it
18 could either be Great Oaks potentially or San Jose
19 muni water.

20 Likewise with the recycled water. South
21 Bay Water Recycling indicated they would be the
22 wholesaler of the water, and they would retail it
23 through the water retailer providing potable water
24 service.

25 MS. DENT: So the proposal for recycled

1 water for the source of the water, South Bay Water
2 Recycling is the only source for recycled water,
3 is that correct?

4 MR. RICHARDSON: It's been identified as
5 the wholesale source.

6 MS. DENT: Right. The water source.
7 And the recycled water resource is available seven
8 to ten miles away from the project, is that
9 accurate?

10 MR. RICHARDSON: That's correct.

11 MS. DENT: It's not available at the
12 project property line?

13 MR. RICHARDSON: That's correct.

14 MS. DENT: Now do you know whether the
15 recycled water resource is available within Great
16 Oaks Water Company's service area or not?

17 MR. RICHARDSON: I believe the recycled
18 water system is currently not in the Great Oaks
19 water service territory.

20 MS. DENT: And Great Oaks Water Company
21 does not, to your knowledge, have a retail
22 agreement authorizing it to retail South Bay Water
23 Recycling recycled water?

24 MR. RICHARDSON: No.

25 MS. DENT: Now, on the potable water

1 supply side, potable water supplies don't
2 currently exist either to serve the project, do
3 they? Even to serve for these limited purposes.

4 MR. RICHARDSON: The position taken by
5 the potable water, Regional Groundwater Manager,
6 Santa Clara Valley Water District, is that in
7 order for either Great Oaks or San Jose Muni to
8 provide potable water to the site, an analysis of
9 the groundwater basin would need to be conducted.
10 And that was conducted.

11 MS. DENT: But the wells, themselves,
12 don't exist to supply the water in the quantity
13 that Metcalf Energy Center needs, do they?

14 MR. RICHARDSON: The wells, there are
15 wells in existence, muni wells 21 through 23, in
16 the vicinity of CVRP and the Metcalf Energy Center
17 that do exist that could provide water to either
18 CVRP or to Metcalf Energy Center.

19 MS. DENT: I understood from the
20 documents in the record that the muni water wells
21 were not -- the current muni water wells are not
22 capable of supplying the quantity of water that
23 MEC needs for its project, even for backup use.

24 Now, am I incorrect in that
25 understanding that new wells would need to be

1 drilled?

2 MR. RICHARDSON: We analyzed the impacts
3 based on the assumption that new wells would be
4 drilled.

5 MS. DENT: So how many new wells did you
6 think would need to be drilled?

7 MR. RICHARDSON: Our analysis was based
8 upon the conservative assumption that two new
9 wells would be drilled.

10 MS. DENT: And where were those wells to
11 be located?

12 MR. RICHARDSON: We've identified those
13 locations in our environmental documentation.
14 They are just south of the Metcalf Energy site,
15 both on the west side of the Union Pacific -- or
16 west side of Monterey Road.

17 MS. DENT: And so the applicant's
18 proposal then would be to have the new wells
19 drilled by someone, and to extend a water line of
20 approximately what distance from those wells to
21 the applicant's site?

22 MR. RICHARDSON: I don't recall the
23 precise number of feet, but it's on the order of
24 approximately 1000 feet.

25 MS. DENT: I believe I read somewhere a

1 1.3 mile water line. Would that --

2 MR. RICHARDSON: My recollection is that
3 that was referring to muni wells 21 through 23 if
4 they were the wells providing water service. But
5 the wells we analyzed in the groundwater modeling
6 and which we address in the environmental document
7 were closer to the Metcalf site than that.

8 MS. DENT: So, you need a seven to ten
9 mile recycled water pipeline to get water to the
10 site. You need two new water wells to have
11 potable water backup. You need 1000 miles (sic)
12 of water pipeline, more or less, from those wells
13 to the site.

14 MR. RICHARDSON: Could I clarify that
15 dimension, 1000 feet.

16 MS. DENT: Thank you, a thousand feet.
17 Now, what about the backup supply for fire flow.
18 There was some indication in the documents that
19 the City's requirement for fire flow would require
20 a, I believe, 480,000 gallon storage tank. But
21 the applicant was proposing a 240,000 gallon
22 storage tank.

23 What is the proposal for storage for
24 fire flow?

25 MR. RICHARDSON: In this case we've

1 estimated and assumed a two-hour full flow
2 condition for meeting fire flows, and I don't
3 recall the exact volume of the storage, but the
4 water source for that fire water protection was
5 assumed to be the wells.

6 MS. DENT: But do you understand that
7 the City's requirement is for four-hour capacity?

8 MR. RICHARDSON: No.

9 MS. DENT: Okay. So there's no proposal
10 at present for a storage, any kind of storage
11 system for water for fire flow?

12 MR. RICHARDSON: No, that's incorrect.
13 I just don't know the answer to that question.

14 MS. DENT: Does anybody up there know
15 the answer to the question?

16 MR. RICHARDSON: I think I'd like to
17 refer this on to counsel in just a moment.

18 MR. HARRIS: There is -- situation. Our
19 expert testified to the water supply availability
20 in the facility design discussion. Talked about
21 the availability of water on site, two hours of
22 flow, what the requirements of the City.

23 That witness happens to be here. I'm
24 going to object it's a facility design question.
25 If you want that witness to present some evidence

1 I'll defer to --

2 HEARING OFFICER VALKOSKY: If the
3 witness is here, I would prefer an answer to the
4 question.

5 MS. DENT: And for this panel I just
6 want to make sure that I'm understanding where the
7 water would come from to fill that --

8 HEARING OFFICER VALKOSKY: I understand,
9 and even though -- you've raised a question which
10 I believe can be answered very quickly.

11 MR. HARRIS: I'm going to ask Mr. Jim
12 Dunstan, who was our witness in the facility
13 design, to explain the fire water issue.

14 HEARING OFFICER VALKOSKY: Thank you.

15 MR. HARRIS: He's been previously sworn.

16 HEARING OFFICER VALKOSKY: Yes, he has.

17 (Laughter.)

18 MR. DUNSTAN: I swear to tell the truth
19 today, too.

20 (Laughter.)

21 Whereupon,

22 JIM DUNSTAN

23 was recalled as a witness herein, and having been
24 previously duly sworn, was examined and testified
25 further as follows:

1 CROSS-EXAMINATION

2 MR. DUNSTAN: One of the documents that
3 I sponsored in my testimony on facility design was
4 a letter that I wrote to the San Jose Fire
5 Department, and I don't recall the date, in
6 response to an internal memo that was attached to
7 various City documents that we've seen a couple of
8 times.

9 And in that letter we provided an
10 analysis of the project's conformance with the San
11 Jose Fire Code in its most recent amendment, based
12 on the actual design of our facility. And that
13 analysis concluded that because of the design of
14 our buildings, the maximum size of the single area
15 that would require fire protection, that the
16 project would be in compliance with the San Jose
17 Fire Code if it included onsite storage sufficient
18 to provide a full two-hour supply at the flow rate
19 specified in the San Jose Fire Code for the
20 maximum fire area, defined on our drawings that
21 had been submitted to the City, in support of our
22 project development zoning.

23 The project will include sufficient
24 onsite storage of water dedicated to fire
25 protection to satisfy the requirements of San Jose

1 Fire Code.

2 HEARING OFFICER VALKOSKY: Can you
3 quantify that storage capacity?

4 MR. DUNSTAN: I believe it's two hours
5 at something like 2500 gallons per minute. The
6 total inventory dedicated to fire protection was
7 on the order of -- do the math in my head --
8 something like half a million gallons. And that
9 water would be supplied from the two potable water
10 wells, but the onsite fire fighting system would
11 not be dependent on the operation of the wells for
12 fire fighting, because we would have sufficient
13 tankage on the site for that purpose.

14 HEARING OFFICER VALKOSKY: Does that
15 answer your question, Ms. Dent?

16 MS. DENT: Yes, thank you.

17 HEARING OFFICER VALKOSKY: Thank you,
18 sir. I'm sorry, did you have something else?

19 MS. DENT: No, no, it did answer my
20 question.

21 MR. WILLIAMS: Sir, if we could, could
22 we keep Mr. Dunstan as a member of this panel?

23 HEARING OFFICER VALKOSKY: No, he's not
24 a member of this panel. He was here only to
25 answer that question. He's answered it.

1 MR. WILLIAMS: Yes, but you refused
2 questions on water during that first session. You
3 were not familiar with Mr. Shipes' testimony.

4 HEARING OFFICER VALKOSKY: Mr. Williams,
5 I have no idea what you're talking about. If you
6 could just hold your questions and let Ms. Dent
7 continue.

8 MR. WILLIAMS: Thank you.

9 MS. DENT: Okay, so I think I've walked
10 through the incoming water. There is only one --
11 there are going to be two wells, but they're going
12 to be operated by one retailer. That's no longer
13 the concept that there might be two different
14 retailers for potable incoming water. That was a
15 concept that was in your earlier environmental
16 documents.

17 MR. RICHARDSON: We didn't understand
18 the concept that way. And there's no concept like
19 that now.

20 MS. DENT: Okay. Now the recycled water
21 pipeline being 7.3 miles away, does Metcalf Energy
22 Center own and control the entire linear alignment
23 to install 7.3 miles of recycled water pipeline?

24 MR. RICHARDSON: No.

25 MS. DENT: You described in your earlier

1 testimony that the pipeline alignment was what you
2 thought was a City-preferred alignment. There
3 were, as I understand it, the proposed pipeline as
4 I understand it, in the AFC, there were three
5 alternatives proposed. And the preferred
6 alternative did not look to me to be an alignment
7 that the City has ever really considered.

8 So I want to make sure I understand what
9 you are talking about in terms of the alignment
10 that the applicant is proposing for the recycled
11 water pipeline. So maybe if you could just
12 verbally tell me where it starts and how it gets
13 to Metcalf Energy Center?

14 MR. RICHARDSON: Okay. The alignment
15 alternatives that were discussed originally in the
16 AFC were later supplemented, and a new preferred
17 alignment was identified. And I believe it was in
18 supplement A, and I believe I can find the
19 description and read the route. But it was the
20 route identified in a memo from Tom Richardson of
21 Montgomery Watson to Eric Rosenblum and John Newby
22 of South Bay Water Recycling. And it was called
23 the urban route. Let me see if I can find it.

24 MS. DENT: I have three descriptions in
25 a November last year supplement. The 7.3 mile

1 alignment which is basically along the Union
2 Pacific Railroad right-of-way is what would be the
3 preferred alignment in this alternative.

4 Then there's the U-101 corridor which is
5 not a preferred alignment. And then there's
6 what's referred to as the Snell Avenue/Santa
7 Teresa Boulevard alignment.

8 Is your current preferred alignment one
9 of those three?

10 MR. RICHARDSON: No.

11 MS. DENT: Something totally different?

12 MR. RICHARDSON: Right. It was
13 identified by South Bay Water Recycling.

14 MS. DENT: And that is in supplement A
15 to the record?

16 MR. RICHARDSON: Yes.

17 MS. DENT: Okay, why don't you go ahead
18 and -- I'm sorry, I've had trouble pulling this
19 stuff off the website. I thought I got the most
20 recent thing when I received the November version.

21 MR. RICHARDSON: I can't read street
22 names off of this USGS map.

23 MR. WILLIAMS: What page is supplement
24 A?

25 MS. DENT: I think he said supplement C.

1 Did you say supplement A or C?

2 MR. RICHARDSON: I said supplement A.

3 The route --

4 HEARING OFFICER VALKOSKY: Excuse me,
5 sir, just for the record, that's the October 1,
6 1999 supplement A that we've identified as exhibit
7 3? Is that the supplement to the application for
8 certification or is it something different?

9 MR. RICHARDSON: It's the supplement to
10 the AFC; I believe it's exhibit number 3.

11 HEARING OFFICER VALKOSKY: Okay, thank
12 you.

13 MR. RICHARDSON: Okay, the description
14 of the route I'm reading from the memorandum. I
15 will read from the supplement A, page 2-1 of AFC
16 supplement A. It's the 10.2 mile long SBWR route,
17 slightly different than what the City's
18 consultants estimated, comprised of a variety of
19 segments.

20 The South Bay Water Recycling route
21 begins at the intersection of Sylvandale and
22 Senter Road; follows the Senter Road southeast,
23 then west approximately 1.4 miles to Monterey
24 Road.

25 The route continues southeast along

1 Monterey Road approximately .5 miles. Is this the
2 kind of detail you want?

3 MS. DENT: Yes.

4 MR. RICHARDSON: Okay. So, .5 miles to
5 Skyway Drive where it turns southwest to follow
6 Skyway Drive approximately .4 miles to Snell
7 Avenue.

8 On Snell Avenue the route follows a
9 portion of segment B presented in the AFC,
10 approximately .7 miles to Chynowith Avenue where
11 it turns east. Then it goes approximately 4 miles
12 east on Chynowith, south on Lean Avenue, east on
13 Blossom Hill Road, south on Beswick Drive, taking
14 a slight jog on Cottle Road, to head east on
15 Raleigh Road, south on Endicott Boulevard,
16 southeast along White Plains Road, crossing under
17 highway 85 and heading southeast along Via Del Oro
18 to Great Oaks Boulevard, where it heads southwest
19 to Santa Teresa Boulevard.

20 At that point then it proceeds down
21 Santa Teresa to the Metcalf site.

22 MS. DENT: So now listening to your
23 reading of the routing, the routing sounds to be
24 primarily, if not exclusively, in rights-of-way,
25 street rights-of-way?

1 MR. RICHARDSON: That's correct.

2 MS. DENT: And Metcalf Energy Center
3 does not have any agreements with the City of San
4 Jose to use street rights-of-way for a water
5 pipeline, does it?

6 MR. RICHARDSON: No.

7 MS. DENT: And have you had any
8 discussions with the Department of Public Works
9 about the leasing street right-of-way for private
10 water lines?

11 MR. RICHARDSON: We have had discussions
12 with the Department of Public Works. Staff at
13 South Bay Water Recycling and Department of Public
14 Works indicated that they would work with Calpine/
15 Bechtel to obtain rights-of-way to route such a
16 pipeline

17 MS. DENT: Now, is it your understanding
18 that there would be any need for private property
19 for the water pipeline, or would it be all
20 exclusively located in public rights-of-way?

21 MR. RICHARDSON: The answer is no.
22 There would need to be right-of-way from Santa
23 Teresa Road to the Metcalf Energy site, and we
24 identified possible routes to get there in the AFC
25 and supplements.

1 There was also a part of the South Bay
2 Water Recycling route that I believe went through
3 lands where IBM is located. And it was possible
4 that those lands would have to be bypassed,
5 depending upon cooperation with IBM.

6 MS. DENT: Now, in terms of the use of
7 either City owned property, if the City doesn't
8 reach agreement with Calpine, or private right-of-
9 way, I think I heard testimony that Calpine would,
10 if the plant were certified, have the power of
11 eminent domain. Did I hear that testimony
12 correctly?

13 MR. RICHARDSON: No.

14 MR. HELM: That would be incorrect.
15 That was not my testimony.

16 MS. DENT: So Calpine, even if the
17 project is certified, would not have the power of
18 eminent domain to acquire property from an owner
19 of the property that was unwilling to allow you to
20 use their property?

21 MR. HELM: That's correct.

22 MS. DENT: And have you had any
23 discussions with any of the private property
24 owners regarding use of their property along the
25 proposed alignment for the water pipeline?

1 MR. RICHARDSON: Could you repeat the
2 question and I'll try to answer it.

3 MS. DENT: Have you had any discussions
4 with the private property owners whose property
5 you would need to use for the recycled water
6 pipeline that you are proposing?

7 MR. RICHARDSON: I believe the answer to
8 that is no, but I would like to clarify that we
9 have proposed not a private pipeline. Our
10 discussions with the City of San Jose Public Works
11 and South Bay Water Recycling have been that the
12 recycled water retailer and South Bay Water
13 Recycling and Calpine/Bechtel would work together
14 to identify the design and construction method of
15 this pipeline. And it would revert back to South
16 Bay Water Recycling as their public facility.

17 MS. DENT: So you're not proposing to
18 build a recycled water pipeline as part of your
19 project. You're proposing to use a recycled water
20 pipeline that the City would build for your
21 project?

22 MR. RICHARDSON: Our discussions with
23 your staff and with Great Oaks have been assuming
24 that Calpine/Bechtel would eventually, if it
25 designed and constructed the pipeline, transfer it

1 to the water retailer providing the recycled
2 water, or to South Bay Water Recycling system.

3 MS. DENT: That someone would need to
4 acquire the right-of-way to put that pipeline in,
5 would they not?

6 MR. RICHARDSON: That's correct.

7 MS. DENT: And Calpine/Bechtel doesn't
8 have the authority to do that?

9 MR. RICHARDSON: That's correct. Could
10 I clarify?

11 MS. DENT: Sure.

12 MR. RICHARDSON: Not the right by
13 eminent domain to acquire it.

14 MS. DENT: Right.

15 MR. RICHARDSON: Right.

16 MS. DENT: Now, in terms of operation of
17 the South Bay Water -- in terms of the operation
18 of the pipeline then after it's constructed, I
19 take it from your testimony that it would be at
20 the City's -- that the City would be responsible
21 for operating the pipeline as Calpine/Bechtel is
22 proposing it?

23 MR. RICHARDSON: Let me answer your
24 question and then see if my panel has anything to
25 add.

1 My understanding is that the pipeline to
2 the Metcalf site would be operated by South Bay
3 Water Recycling, as they operate all their current
4 facilities, and not operated by a water retailer.

5 MS. DENT: Well, now South Bay Water
6 Recycling only wholesales water, it does not
7 retail water, is that correct?

8 MR. RICHARDSON: That's my
9 understanding.

10 MS. DENT: So, South Bay Water Recycling
11 doesn't have any other customer to whom it
12 directly supplies the water. The water all goes
13 through retailers, is that your understanding?

14 MR. RICHARDSON: That's my
15 understanding.

16 MS. DENT: So, this would be a different
17 situation. This would be a pipeline directly to
18 Metcalf Energy Center -- I'm just trying to
19 understand what the proposal is -- this would be a
20 pipeline going directly to Metcalf Energy Center
21 that would not go through a retailer or would go
22 through a retailer?

23 MR. RICHARDSON: The service of the
24 water, our understanding is it would go through a
25 retailer.

1 MS. DENT: So there would be a retailer
2 responsible then, some retailer responsible for
3 the pipeline?

4 MR. RICHARDSON: My understanding is
5 that the pipeline would ultimately be owned and
6 operated by the wholesaler just as all of the
7 pipelines in the current South Bay Water Recycling
8 system are owned and operated by the South Bay
9 Water Recycling.

10 MS. DENT: Are you familiar with the
11 arrangements that the City has with its retailers,
12 though, for maintenance and operation of the
13 pipelines?

14 MR. RICHARDSON: No.

15 MS. DENT: But some other agency other
16 than Metcalf Energy Center would take care of the
17 pipeline after it was built, that's your
18 understanding?

19 MR. RICHARDSON: Yes. And the fee
20 structures have been proposed by the South Bay
21 Water Recycling as to how those fees would pay to
22 compensate those agencies for that service.

23 MS. DENT: Now, I want to turn next to
24 the wastewater disposal, and I want to make sure I
25 understand the wastewater disposal line, too,

1 because again I'm sorry, the document that I
2 pulled off the web, and it is dated in November,
3 so I thought I was getting the most recent thing,
4 indicates a, I think, 6.3 mile long sewer line.
5 That your sewer line is going to go all the way
6 from Metcalf Energy Center back up to Hillsdale
7 and Capital or something like that.

8 Where is the sewer line going to be and
9 go?

10 MR. RICHARDSON: It's proposed to go
11 from the site to a sewer in Santa Teresa Road.

12 MS. DENT: So, it is now proposed to go
13 to Santa Teresa Boulevard?

14 MR. RICHARDSON: Yes, and that's based
15 upon input and discussions with your Public Work
16 Staff.

17 MS. DENT: So was there at one point in
18 time when there was perceived to be a deficiency
19 in the lines closer to the property for carrying
20 the volume of sewage that Metcalf Energy Center
21 will generate?

22 This, again, is a CEC document, so I'm
23 trying to decide -- there's a big difference
24 between a 7.3 mile sewer line and one that goes
25 over to Santa Teresa Boulevard.

1 MR. RICHARDSON: Yes.

2 MS. DENT: So this document seems to
3 indicate that the 7.3 mile line was needed because
4 the sewer lines closer in didn't have the capacity
5 for the volume of discharge.

6 MR. RICHARDSON: The reason for the
7 discrepancy or difference you're identifying is
8 that initially we were told by the Public Works
9 Department representatives that in order to
10 connect into the sewer on Santa Teresa Boulevard
11 either there wasn't capacity there, or there would
12 need to be a large share of the \$16 million
13 benefit assessment that had been created for
14 upsizing that sewer.

15 Later we were told there was, in fact,
16 capacity for our discharge and told also that any
17 benefit assessment would be proportional to the
18 land area developed, not proportional to any other
19 measure.

20 MS. DENT: So then it is your
21 understanding that the sanitary sewer system that
22 is proposed to be built as part of the Coyote
23 Valley Research Park or Cisco development, and the
24 community facilities district that's been put
25 together to build that sewer system will have a

1 capacity to handle Metcalf's sewage flow, as well?

2 MR. RICHARDSON: We have not made any
3 assumptions about discharging into the Coyote
4 Valley project. We --

5 MS. DENT: I'm talking about the
6 sanitary -- you mentioned the sanitary sewer
7 system and the community facilities district, so
8 there's not sanitary sewage facilities now in
9 place physically with capacity to handle Metcalf
10 Energy Center's sewage discharge in Santa Teresa
11 Boulevard?

12 MR. RICHARDSON: No, that's not my
13 testimony.

14 MS. DENT: The facilities currently
15 exist?

16 MR. RICHARDSON: That's what we've been
17 told by the Department of Public Works Staff.

18 MS. DENT: You previously thought that
19 the facilities were not adequate. There's been no
20 physical change in the facilities. Now you think
21 they are adequate?

22 MR. RICHARDSON: We're basing this upon
23 correspondence with the Department of Public Works
24 Staff, not based upon any assumptions on our part.

25 MS. DENT: You haven't done any analysis

1 of the sewer system to see whether or not there is
2 capacity?

3 MR. RICHARDSON: No.

4 MS. DENT: And what's the volume of
5 sewage discharge by Metcalf Energy Center?

6 MR. RICHARDSON: We've expressed it on a
7 flow basis, 0.6 million gallons per day, average
8 dry weather flow, average flow. And 1.1 million
9 gallons per day peak flow.

10 MS. DENT: I thought I had a -- I'm
11 sorry, because I should have looked at my note
12 before I asked, I thought I saw a 1.9 million
13 gallon per day peak flow. That's probably in the
14 preliminary staff assessment. Is that accurate?

15 MR. RICHARDSON: We originally
16 identified a range of flows. 1.9 would have been
17 the peak flow if we cycled our cooling towers at
18 three cycles.

19 We refined that through the process of
20 analysis and were able to end up with a five cycle
21 cooling tower process which resulted in a peak
22 flow of 1.1 mgd.

23 MS. DENT: Now, that would be the flow
24 into the sewer system, and that would be the flow
25 that the San Jose/Santa Clara water pollution

1 control plant would be required to treat, 1.1 mgd
2 peak?

3 MR. RICHARDSON: Peak, yes.

4 MS. DENT: And so the proposal to
5 relocate the wastewater pipeline in the same
6 trench as the recycled water pipeline is no longer
7 applicable?

8 MR. RICHARDSON: Because the recycled
9 water pipeline is proposed to come down Santa
10 Teresa Road, and the sanitary sewer is in Santa
11 Teresa Road, it's possible that the two pipelines
12 would be in the same pipeline corridor serving the
13 site. But they would not be in the same trench.

14 MS. DENT: Now, does Metcalf Energy
15 Center actually front on Santa Teresa Boulevard?

16 MR. RICHARDSON: No.

17 MS. DENT: So how is the sewer service
18 that is in -- that you say is in Santa Teresa
19 Boulevard going to get from Santa Teresa Boulevard
20 to Metcalf Energy Center? Will it be a lateral
21 across private property? Will it be in public
22 streets?

23 MR. RICHARDSON: Initially we assumed
24 and put in the AFC a crossing from Metcalf Energy
25 Center along private property paralleling Fisher

1 Creek to Santa Teresa.

2 Later when CVRP laid out its facilities
3 we identified an access road that would be
4 provided if CVRP were to go ahead. And that was
5 our proposal would be that we would put the sewer
6 and recycled water line in the easement under that
7 access road.

8 MS. DENT: And who owns the access road?

9 MR. RICHARDSON: Well, there is not one
10 at this point. There is not an access road at
11 this time.

12 MS. DENT: Who owns the property that
13 the access road would be located on?

14 MR. RICHARDSON: Right now I'll answer
15 the part I know, which is that the public street
16 that would connect -- that would be part of CVRP
17 would be a public street --

18 MS. DENT: So, it's not an access road,
19 it's a future public street?

20 MR. RICHARDSON: Then the access road
21 from the Metcalf Energy Center to hooking into the
22 public streets, that, I believe, I need to ask --
23 I do not know who owns that land.

24 MS. DENT: So in order to put the sewer
25 line in that way you'd need to use part of a

1 public street and you would need to use part of
2 somebody's private property, you'd need to get an
3 easement?

4 MR. RICHARDSON: Yes. That would be my
5 understanding.

6 MS. DENT: And, again, same thing as
7 with the recycled water pipeline, Metcalf Energy
8 Center does not have the power of eminent domain
9 over private property?

10 MR. RICHARDSON: Yes.

11 MS. DENT: So there are three areas then
12 that Metcalf Energy Center and the City would need
13 to reach some kind of arrangement on in order for
14 the project to have public services.

15 One is recycled water. One is potable
16 water. And the third is sanitary sewer service.
17 Is that it? In the water area.

18 MR. RICHARDSON: I'll answer the first
19 question is recycled water, I believe, yes, that
20 there would need to be an agreement.

21 Relative to sewer service and flow to
22 the treatment plant I believe that would be
23 required.

24 And relative to the potable water
25 supply, that would be either San Jose Muni or

1 Great Oaks would need to be partnered with to
2 provide that.

3 MS. DENT: Now, I think I read in your
4 testimony that Great Oaks Water Company is not
5 currently authorized to provide service, though,
6 to the physical location of Metcalf Energy Center.
7 It's not part of their tariff service area.

8 MR. RICHARDSON: I don't know if any of
9 us up here on our panel can answer that question.
10 I don't know that the site is necessarily in their
11 service territory.

12 MS. DENT: Okay, well, if anybody else
13 knows they can speak up, and if not, then we'll
14 assume that none of you know whether or not Great
15 Oaks has Metcalf Energy Center in its tariff
16 service area.

17 MR. RICHARDSON: Yes. Just a moment.

18 (Pause.)

19 MR. RICHARDSON: Our understanding is
20 that Great Oaks has applied to the CPUC to provide
21 service to the Metcalf Energy Center through a
22 process at the CPUC. We do not know whether the
23 City of San Jose has protested that, or what the
24 City's position is on it.

25 MS. DENT: But the application is to the

1 CPUC, it's your understanding?

2 MR. RICHARDSON: There is an advice
3 letter, I believe.

4 MS. DENT: So maybe potable water, maybe
5 not potable water, but definitely recycled water
6 and sanitary sewage would have to -- some
7 arrangement would have to be reached between the
8 City and Metcalf Energy Center?

9 MR. RICHARDSON: Yes.

10 MS. DENT: Now, Metcalf Energy Center is
11 not currently located in the City of San Jose, is
12 it?

13 MR. RICHARDSON: I'll refer that to Mr.
14 Abreu.

15 MR. ABREU: We have a 20-acre parcel
16 that we'll develop, and half of it's in the City
17 and half of it's in the County.

18 MS. DENT: And on that 20-acre parcel
19 can you tell me where your plant is proposed to be
20 located, in terms of the half that's in the City
21 versus the half that's in the County?

22 MR. ABREU: Part of the plant would be
23 in the County land and part of the plant would be
24 in the City land. The southern portion of the
25 power plant would be in the City. And the

1 northern portion of the power plant would be in
2 the County.

3 MS. DENT: And the County, so far as you
4 know, provides absolutely no services anywhere
5 near Metcalf Energy Center in terms of water or
6 sewer? Or if they do, you can enlighten me.

7 MR. RICHARDSON: I'm not aware of any
8 service in the immediate vicinity by the County.

9 MS. DENT: So, now Metcalf Energy Center
10 has filed an application for annexation, that was
11 your testimony, I think, Mr. Abreu?

12 MR. ABREU: Yes.

13 MS. DENT: You said it may or may not be
14 withdrawn. If the application is either withdrawn
15 or denied, and the property is not annexed to the
16 City, would you follow through for me, Mr. Abreu,
17 the steps that you think the City and Metcalf
18 Energy Center would need to go through and the
19 approvals that would need to occur in order for
20 services to be provided to Metcalf Energy Center?

21 MR. ABREU: Once we've gotten, if we
22 obtain our CEC approval, then we would go to the
23 City and apply for our sewer permit. We would go
24 to Great Oaks and to the City and seek potable
25 water and recycled water.

1 And we would go to South Bay Water
2 Recycling and Great Oaks, as well, to see about
3 the pipeline and who wanted to finance it to get
4 it put in.

5 And then, you know, from that either
6 with the City, or with the City and Great Oaks, we
7 would get our permit for the sewer discharge and
8 we would get an agreement for a supply of potable
9 water at commercial rates, the standard rates, and
10 we would have an arrangement for providing us the
11 recycled water, which would have to be negotiated
12 between us, South Bay Water Recycling and possibly
13 Great Oaks.

14 Kris, did I leave anything out there?

15 MR. HELM: I may have lost the thread,
16 but regarding the annexation, again, I guess
17 you're assuming that administrative remedies
18 towards annexation have been exhausted --

19 MS. DENT: I'm assuming that the
20 property is in the County. Let's just assume that
21 the project stays in the County for whatever
22 reason, and so it, in fact, Mr. Abreu, it's not a
23 permit, it's a contract that the City Council
24 would have to approve for service outside the City
25 limits, is that your understanding?

1 MR. ABREU: I'm not sure what the exact
2 document's called. Dave or Kris?

3 MR. HELM: I believe to provide service
4 outside of the City's territory it would be a
5 contract.

6 MS. DENT: And so now is it your
7 understanding that that contract for sewer service
8 or potable water service, recycled water service
9 outside the City limits, that contract would have
10 to be approved by the San Jose City Council? Is
11 that your understanding?

12 MR. HELM: We're still in this
13 hypothetical here?

14 MS. DENT: Yes.

15 MR. HELM: My understanding is yes, it
16 would need to be approved by the City.

17 MS. DENT: Now, is it also your
18 understanding that that contract would have to be
19 approved by the City Council of the City of Santa
20 Clara because San Jose doesn't have the authority
21 to provide water service outside its City limits
22 under the contract that governs the operation of
23 the treatment plant?

24 MR. HELM: I think we've gotten confused
25 now, we've got three kinds of service here. Could

1 you be clear on this --

2 MS. DENT: Let's talk about the sewer
3 service. I'll just say the sewer service
4 contract.

5 MR. HELM: Okay.

6 MS. DENT: The sewer service contract,
7 because it's to provide not only the sewer
8 connection, but to provide the wastewater
9 treatment for 1.1 million gallons per day of
10 sewage, that sewer treatment contract, if it is to
11 a facility located outside the City, under San
12 Jose's contract with the City of Santa Clara,
13 requires the approval of the Santa Clara City
14 Council, as well. Do you agree with me? You can
15 say no if you don't.

16 MR. ABREU: It's not clear at this point
17 what the approval would be since we're partly in
18 the City and partly in the County.

19 MS. DENT: So you don't know, maybe,
20 maybe not?

21 MR. ABREU: Don't know.

22 MS. DENT: Okay. Now, what about your
23 understanding of the need for LAFCO approval for
24 outside service contracts. Do either one of you
25 have any opinion on that?

1 MR. ABREU: Can you clarify this
2 hypothetical? We're hypothetical-ing about your
3 hypothetical, and what it really is.

4 MS. DENT: If the Metcalf Energy Center
5 property, if there's no further annexation of the
6 property to the City of San Jose, if the property
7 continues in its current status, half inside the
8 City and half in the County, is it your
9 understanding that in order to provide urban
10 services to that property, LAFCO approval of what
11 is commonly termed an outside service contract
12 would be required.

13 MR. HARRIS: I'm going to object on the
14 basis that you're asking for a legal conclusion.
15 Specifically you're asking him about the
16 application of -- the impact of the Warren Alquist
17 Act on that local government --

18 PRESIDING MEMBER LAURIE: That's
19 overruled, Mr. Harris. She's just asking what
20 procedure you have to follow, and whether or not
21 LAFCO decision-making is required in order to have
22 the required contract. Go ahead and answer the
23 question if you know, sir.

24 MR. ABREU: It's not clear to us what it
25 would be.

1 MS. DENT: I want to ask for a moment
2 just so that I can make sure that I'm clear in the
3 record about the water usage for the facility, and
4 I think there was some earlier testimony about the
5 water usage for this facility versus the water
6 usage for Coyote Valley Research Park, so I want
7 to make sure I understand the proportions and the
8 ratios.

9 My understanding of the water usage for
10 cooling tower purposes for this project is 4.5 mgd
11 peak, and 3.3 mgd average, is that correct?

12 MR. RICHARDSON: Yes.

13 MS. DENT: And I believe there's a
14 reference in the PSA that the usage for Coyote
15 Valley Research Park is 900,000 gallons per day.
16 Are you familiar with that figure?

17 MR. RICHARDSON: I recall a number
18 approximately that large for Coyote Valley
19 Research Park. I think by their estimate. And I
20 also recall their discharge being in that range.

21 The estimate for water use for Coyote
22 Valley Research Park that we used in our modeling
23 of the groundwater impacts was based upon input
24 from the Santa Clara Valley Water District, and
25 that was 2800 acrefeet per year. I can estimate

1 what that is in million gallons per day,
2 approximately --

3 MS. DENT: That's about twice as much.
4 The estimate that is in the record for the 900,000
5 gallons per day is 1344 acrefeet per year.
6 Acrefeet, I'm sorry.

7 MR. RICHARDSON: Yes. And we --

8 MS. DENT: So you did a conservative
9 estimate, and you estimated more?

10 MR. RICHARDSON: Yes, based upon input
11 from the water district and also agreement by the
12 CEC Staff in terms of the level of analysis we
13 were doing for cumulative impacts.

14 MS. DENT: But Metcalf Energy Center's
15 water usage is two to three times, depending on
16 which number you use?

17 MR. RICHARDSON: No.

18 MS. DENT: Well, I'm sorry, can you
19 compare the two for me, then?

20 MR. RICHARDSON: Our usage of
21 groundwater?

22 MS. DENT: No, just your water usage
23 generally.

24 MR. RICHARDSON: Our water use overall,
25 groundwater, is 940 acrefeet per year; and our use

1 of recycled water is approximately 3500 acrefeet
2 per year. I can give you the exact number if you
3 want.

4 MS. DENT: So the total amount of water
5 that the project is using is in the neighborhood
6 of 4500 acrefeet per year?

7 MR. RICHARDSON: Yes.

8 MS. DENT: Now, there was some testimony
9 earlier about the usage of recycled water by the
10 Metcalf Energy Center project during the winter
11 months. And that Metcalf Energy Center would be
12 one of the heavier users during the winter months.

13 Was that pretty much the testimony?

14 MR. RICHARDSON: Yes.

15 MS. DENT: In fact, the other users of
16 South Bay Water Recycling water are primarily
17 landscape irrigation users, is that your
18 understanding?

19 MR. RICHARDSON: Yes.

20 MS. DENT: And the 120 million gallon
21 per day trigger, or operational constraint, or
22 whatever you want to call it, that the treatment
23 plant designed South Bay Water Recycling around is
24 an average dry weather flow, isn't it?

25 MR. RICHARDSON: It is a flow constraint

1 expressed in terms of the precise definition in
2 the Regional Board order relating to flows in the
3 dry weather season.

4 MS. DENT: So, the dry weather months
5 are the months when South Bay Water Recycling
6 needs to recycle water the most?

7 MR. RICHARDSON: That's not my
8 testimony.

9 MS. DENT: Well, is there some
10 constraint that we're not aware of that requires
11 flows to be lower during the winter months?

12 MR. RICHARDSON: My understanding is
13 that the flow constraint relates to dry weather
14 flows, and the South Bay Water Recycling system
15 has been proposed and designed, and is operated to
16 provide recycled water year-round.

17 The EIR contemplates that, and the
18 operation has a variety of customers, both year-
19 round users and seasonal users.

20 MR. HELM: I would also point out that
21 the South Bay Water Recycling project is a
22 partnership between the City and the Water
23 District, in that there are agreements between
24 Santa Clara Valley Water District and the South
25 Bay Water Recycling to provide essential financing

1 and financial support for the project.

2 And so when we consider the objectives
3 of the recycling project, we would also consider
4 the water supply objectives of the project.

5 MS. DENT: I'm going to leave that one
6 alone. You must know something more about the
7 money than I do.

8 The question that I want to ask, though,
9 about the South Bay Water Recycling water and the
10 users of the water relates more to the Metcalf
11 Energy Center and the type of user Metcalf Energy
12 Center is versus the type of user that the project
13 currently serves.

14 Do you know whether or not South Bay
15 Water Recycling has any other users that do no
16 have complete access to potable water backup? In
17 other words, do you understand that South Bay
18 Water Recycling has, under its agreements with its
19 retailers, the absolute right to turn off the
20 spigot for the recycled water, and that potable
21 water will be reconnected to fully supply the use?

22 MR. RICHARDSON: I'm not familiar with
23 that direct provision. I am aware that users
24 cannot have potable water pipelines and recycled
25 water pipelines hooked up to meet a use

1 concurrently.

2 MS. DENT: Not to be used concurrently,
3 but are you -- do you have any information of any
4 other user that you can name that uses South Bay
5 Water Recycling water that does not have access to
6 potable water at the property line, fully adequate
7 to serve the needs of their project?

8 MR. RICHARDSON: I'm not aware.

9 MS. DENT: Thank you.

10 PRESIDING MEMBER LAURIE: How much more,
11 Ms. Dent?

12 MS. DENT: I'm going to have just a
13 couple questions, actually, about storm water.
14 I'm getting ready to switch. And I just want to
15 understand the facilities really, in relation to
16 the riparian corridor, specifically the riparian
17 corridor setback.

18 I thought I read in one of the documents
19 that there was going to be a storm water detention
20 basin. Is that currently the proposal for there
21 to be a storm water detention basin?

22 MR. RICHARDSON: Yes.

23 MS. DENT: And how large is the storm
24 water detention basin?

25 MR. RICHARDSON: I will -- I think Earl

1 Byron or Ben Everett would be able to provide you
2 with the design criteria for that basin.

3 DR. BYRON: The current design for the
4 storm water basin is for a capacity of 1.9
5 acrefeet total. The actual, you know, linear
6 dimensions I'd have to scale off a map. I don't
7 know if I have those presented in the document in
8 terms of so many feet wide or long. What type of
9 information are you looking for?

10 MS. DENT: And in terms of locating that
11 on the site, is that set back quite a distance
12 from Fisher Creek, or is it adjacent to the Creek?
13 How is the storm water detained and then
14 discharged into the Creek?

15 DR. BYRON: The storm water is detained
16 in the basin prior to discharge to the Creek.

17 MS. DENT: And then there's a channel to
18 the Creek?

19 DR. BYRON: There's a pipe.

20 MS. DENT: Is the storm water detention
21 basin set back from the Creek per the City's
22 riparian corridor policy?

23 DR. BYRON: Yes.

24 MS. DENT: Did you consider the County's
25 riparian corridor policy in terms of setback of

1 the storm water detention basin from the Creek?

2 DR. BYRON: I believe so -- it's 100-
3 foot setback, isn't it?

4 MS. DENT: The County's policy, I think,
5 is more than the City's. I'm not ready -- I can't
6 really represent it to you, but I think the
7 County's policy is 150.

8 And my question, based on the documents,
9 was really whether or not the County's riparian
10 corridor policy was considered in terms of these
11 facilities, specifically the storm water detention
12 facilities.

13 MR. RICHARDSON: I'd like to refer this
14 to Ken.

15 MR. ABREU: The answer is yes.

16 MS. DENT: Okay. And does the storm
17 water detention facility include any kind of
18 treatment mechanism to treat the storm water
19 before discharge to the Creek?

20 DR. BYRON: Not specifically, other than
21 detention in itself.

22 MS. DENT: Filtration, no?

23 DR. BYRON: No.

24 MS. DENT: Oh, I'm sorry, I have one
25 other question to go back on the recycled water

1 pipeline. Because it sounded to me like you were
2 describing a pipeline alignment that's somewhat
3 new, and it sounded like it was something that you
4 had heard recently, maybe from the City, I don't
5 know.

6 My question really is whether or not
7 that particular pipeline alignment is what is
8 reflected in the final staff assessment, and
9 whether or not the biological or cultural
10 resources, and et cetera, for the project have
11 been done on that final pipeline alignment.

12 MR. RICHARDSON: Yes. Let me go back to
13 your assumption or word of new. The pipeline
14 alignment was made -- we were made aware of it on
15 May 3, 1999, through correspondence from your
16 staff. And it was included in the AFC supplement
17 A. I don't have a date on that, but -- October 1,
18 1999.

19 So that's the -- since that time we have
20 presented analyzed and my understanding is the FSA
21 is indeed prepared on the basis of that pipeline
22 route.

23 MS. DENT: Okay. If I could have just
24 one moment to talk to my client, to make sure I
25 don't have any further questions?

1 (Pause.)

2 MS. DENT: They say no. Thank you.

3 PRESIDING MEMBER LAURIE: Thank you, Ms.
4 Dent.

5 HEARING OFFICER VALKOSKY: Thank you,
6 Ms. Dent. At this time I'd like to take a brief
7 recess. We'll reconvene at 5:00.

8 (Brief recess.)

9 HEARING OFFICER VALKOSKY: While off the
10 record the parties have agreed to accommodate Mr.
11 Ajlouny's witness on traffic transportation and
12 hazardous materials management, whose testimony
13 has been timely prefiled. Identified as exhibit
14 32.

15 There are two ways to approach this.
16 One, we can have the intervenor sponsor the
17 witness, with the witness up for cross-examination
18 from the parties. Or, if there is no cross-
19 examination anticipated on the basis of Mr.
20 Spellman's testimony, we can take it in, exhibit
21 32, as a stipulation.

22 Is there any party who desires to cross-
23 examine Mr. Spellman? Applicant?

24 MR. HARRIS: I want to make sure I
25 understand. You're talking about just accepting

1 the testimony under stipulation?

2 HEARING OFFICER VALKOSKY: That's
3 correct.

4 MR. HARRIS: Okay. We would agree to
5 that.

6 HEARING OFFICER VALKOSKY: Staff.

7 MS. WILLIS: We're fine with that, as
8 well.

9 HEARING OFFICER VALKOSKY: Any of the
10 other parties?

11 MR. WILLIAMS: No objection.

12 MS. CORD: No objection.

13 HEARING OFFICER VALKOSKY: Mr. Scholz?

14 MR. SCHOLZ: I had one question for him,
15 but does that open it up to everybody if I ask
16 that one question?

17 PRESIDING MEMBER LAURIE: Yes.

18 MR. SCHOLZ: They already said no, so
19 can I say yes?

20 HEARING OFFICER VALKOSKY: You can say
21 yes. I'm not here to prejudice anybody's rights.

22 MR. AJLOUNY: Can I ask a question? I
23 thought I was all prepared. If they accept it
24 into testimony or whatever the words are, and his
25 testimony is that a fire station needs to be close

1 by, does that mean everyone's accepting that's the
2 truth and --

3 PRESIDING MEMBER LAURIE: I'm sorry,
4 Stan, go ahead.

5 HEARING OFFICER VALKOSKY: That means
6 that is part of the evidence that has to be
7 considered. There may be different opinions from
8 different witnesses, but that will certainly be a
9 representation of Mr. Spellman's opinion, and as
10 such, will have to be evaluated on an equal basis
11 with the other body of evidence on that issue.

12 MR. AJLOUNY: Okay.

13 HEARING OFFICER VALKOSKY: Okay, I'm
14 sorry, Mr. Scholz, it was on you.

15 MR. SCHOLZ: That's acceptable to me.

16 HEARING OFFICER VALKOSKY: Okay, any
17 other of the parties? Mr. Boyd?

18 MR. BOYD: I kind of walked into the
19 middle of something, can you explain what we're
20 doing?

21 HEARING OFFICER VALKOSKY: The question
22 is do you wish to cross-examine Mr. Ajlouny's
23 witness, Mr. Spellman, on his prefiled testimony
24 contained in exhibit 32 --

25 MR. BOYD: No, no, no. No.

1 HEARING OFFICER VALKOSKY: The answer is
2 no? Okay. There is no desire to cross-examine.
3 Is there any objection to moving exhibit 32 into
4 evidence?

5 There is no objection. Mr. Ajlouny,
6 would you like to move that exhibit 32 be entered
7 into evidence?

8 MR. AJLOUNY: Yes.

9 HEARING OFFICER VALKOSKY: Exhibit 32 is
10 received into evidence upon stipulation of the
11 parties.

12 MR. AJLOUNY: You mean my witness can
13 leave?

14 HEARING OFFICER VALKOSKY: Meaning your
15 witness can leave.

16 MR. AJLOUNY: I wish I would have known
17 that before I called --

18 (Laughter.)

19 MR. AJLOUNY: Thank you very much.

20 HEARING OFFICER VALKOSKY: All right,
21 we'll return to the cross-examination on the topic
22 of soil and water resources. Next on my list is
23 the Santa Teresa Citizen Action Group.

24 MS. CORD: I'd like to introduce first
25 Ms. Libby Lucas, who will be doing the first part

1 of our cross-examination.

2 HEARING OFFICER VALKOSKY: Thank you.

3 Ms. Lucas, proceed.

4 MS. LUCAS: I'm not quite sure I have
5 the process down, but I presume one has to ask
6 questions.

7 CROSS-EXAMINATION

8 BY MS. LUCAS:

9 Q On page 514 should the water supply of
10 the City of San Jose be listed as a beneficial use
11 of Coyote and Fisher Creeks? It was not in the
12 document that -- the staff assessment.

13 MR. RICHARDSON: Is that directed to us?

14 MS. LUCAS: Yes.

15 MR. RICHARDSON: Could you tell me where
16 on page 514 you're referring to?

17 MS. LUCAS: About midway down.

18 MR. RICHARDSON: Under the category of?

19 MS. LUCAS: I think surface water.

20 MR. RICHARDSON: Surface water, and --

21 MS. LUCAS: It talks about beneficial
22 uses. And it says that, you know, it mentions
23 them all, but it does not mention the fact that
24 it's the water supply.

25 MR. RICHARDSON: Okay. So the question

1 is?

2 MS. LUCAS: Isn't the water supply a
3 beneficial use for all of San Jose?

4 MR. RICHARDSON: Beneficial uses for
5 Coyote Creek --

6 MS. LUCAS: And Fisher Creek.

7 MR. RICHARDSON: -- and Fisher Creek.
8 Coyote Creek does provide recharge to the
9 groundwater basin. It does not provide direct
10 municipal water supply. So the Regional Water
11 Board does not usually identify municipal water
12 supply unless it's a direct use out of the Creek.

13 MS. LUCAS: If it supplies all the
14 entire aquifer system underneath the City it does
15 not consider that a water supply?

16 MR. RICHARDSON: This is a statement in
17 the FSA from the staff of the CEC, and it's just
18 indicating how the Regional Water Quality Control
19 Board designates beneficial uses for Coyote Creek.

20 MS. LUCAS: I'm amazed at that, when it
21 has about a dozen percolation ponds on it?

22 MR. RICHARDSON: I don't know the exact
23 number, but it does have percolation ponds along
24 Coyote Creek.

25 MS. LUCAS: I'm having trouble believing

1 this. My second question is should the 229 square
2 miles of the Coyote Creek watershed be the
3 parameters of the review for the water resources
4 of the Coyote Valley sub-basin rather than just 15
5 square miles?

6 MR. RICHARDSON: You're asking about --
7 if you could please repeat the question?

8 MS. LUCAS: Should the 229 square miles
9 of the Coyote Creek watershed be the parameters of
10 review for the water resources of the Coyote
11 Valley sub-basin, rather than just the 15 square
12 miles?

13 MR. RICHARDSON: Relative to analysis of
14 what impacts?

15 MS. LUCAS: Water supply. How much
16 water gets there. Water quality.

17 MR. RICHARDSON: The answer is that we
18 have looked, we did analyze water supply relative
19 to the entire Santa Clara Valley water system.
20 And the Santa Clara Valley Water District provided
21 that kind of perspective in terms of the demands
22 of the project relative to its water supply.

23 And then we went to a more specific
24 greater level of detail to answer the specific
25 questions in the Coyote Valley, a more detailed

1 level of analysis.

2 MS. LUCAS: Well, I was thinking more in
3 terms of the water management for a flood. I mean
4 basically water runs downhill, and Fisher Creek,
5 do you agree, is 10 to 20 feet lower than Coyote
6 Creek?

7 MR. RICHARDSON: Let's see, I think
8 there were a couple questions there. The first
9 question was --

10 MS. LUCAS: Go with the first --

11 MR. RICHARDSON: -- relative to flood
12 impacts?

13 MS. LUCAS: Well, how much water are you
14 going to have at the project site. As I say, do
15 you agree with the fact that Fisher Creek is 10 to
16 20 feet lower than Coyote Creek?

17 MR. RICHARDSON: I'm not sure of the
18 precise depth of the Creek. We did analyze Fisher
19 Creek, however, and used the current data on
20 Fisher Creek to do our analysis.

21 MS. LUCAS: A very limited watershed,
22 though, that only encompasses, you know, nine
23 square miles, I think. But what I'm saying is
24 that the 229 square miles of the Coyote Creek
25 watershed is up in the foothills. It's running

1 downhill. And it all ends up at the low point,
2 which is Fisher Creek.

3 MR. RICHARDSON: Our analysis did take
4 into account water levels on Coyote Creek in our
5 analysis.

6 MS. LUCAS: This is water levels on
7 Fisher Creek. Did you take into account the fact
8 that -- you said everything is geared to the 24-
9 hour storm. Did you evaluate the 48-hour storm
10 and the 72-hour storm with this cumulative impact
11 on Fisher Creek?

12 MR. RICHARDSON: I will refer that one
13 to Mr. Everett.

14 MR. EVERETT: At first we did look at
15 all three events, but in the final analysis, you
16 know, the District asked us to only look at the
17 24-hour event.

18 MS. LUCAS: The District? Santa Clara
19 Valley Water District --

20 MR. EVERETT: Santa Clara Valley Water
21 District.

22 MS. LUCAS: -- asked you just to look at
23 the 24-hour event?

24 MR. EVERETT: Yes. They felt it was
25 conservative enough. The storm is about 6.89

1 inches over, you know, a 24-hour period, which is
2 quite conservative.

3 MS. LUCAS: Do you have a document from
4 the Water District that says that?

5 MR. EVERETT: Not with me.

6 MS. LUCAS: But they did put it in
7 writing and say only consider a 24-hour event for
8 the flood concerns, the FEMA flood concerns of
9 this project site?

10 MR. EVERETT: Yes.

11 MS. LUCAS: Could that be -- is that in
12 evidence? Is there a date or an author for that
13 letter?

14 MR. EVERETT: I don't think it's in
15 evidence.

16 MS. LUCAS: Could it be produced to be
17 put in evidence?

18 MR. EVERETT: I'm sure it could.

19 MS. LUCAS: And the author of it was?

20 MR. EVERETT: I'm sorry?

21 MS. LUCAS: The author of it, of the
22 staff level?

23 MR. EVERETT: I forget who on the staff
24 wrote the letter, the District Staff wrote the
25 letter.

1 MS. LUCAS: Because the letter that the
2 District wrote in regards to the Coyote Valley
3 insisted that they look at the 72-hour event.
4 They particularly pointed that out that that had
5 to be a consideration.

6 MR. EVERETT: We were looking at all
7 three events quite earlier on in April of 2000.
8 But, you know, in the final -- when we did the
9 final studies in June, they had then asked us just
10 to look at the 24-hour event. I don't know what
11 they had asked the folks, you know, upstream to
12 look at at that time.

13 We weren't doing that work. Shaff and
14 Wheeler, the consultant for CVRP was doing that
15 work.

16 MS. LUCAS: And is it my understanding
17 from the Shaff and Wheeler report that the access
18 road is inundated under the 24-hour, 100-year
19 event?

20 MR. EVERETT: Well, are you talking
21 about the flow event on Fisher Creek, or are you
22 talking about --

23 MS. LUCAS: On Fisher Creek, yeah. Flow
24 on Fisher Creek.

25 MR. EVERETT: -- the precip on the

1 Metcalf site?

2 MS. LUCAS: On Fisher Creek, the flow
3 event.

4 MR. EVERETT: Okay, they only modeled
5 Fisher Creek down to Santa Teresa Boulevard. And
6 where it curves around and starts heading to the
7 east, and then gets eventually to the Metcalf
8 site. Are you talking about the access road into
9 the Metcalf site?

10 MS. LUCAS: From Santa Teresa, yes.

11 MR. EVERETT: Yes, we did include that
12 in our model.

13 MS. LUCAS: But it is under water and
14 under the 100-year event?

15 MR. EVERETT: It is under water.

16 MR. HARRIS: By way of clarification,
17 are we talking about the western access road here?

18 MS. LUCAS: This is the western access
19 road, yes.

20 MR. HARRIS: Okay, it's not the primary
21 access road.

22 MR. EVERETT: I'm not talking about the
23 western access road, I'm talking about the eastern
24 access road, the access road that's located on the
25 eastern side of Fisher Creek.

1 MR. HARRIS: Yeah, that is the --

2 MS. LUCAS: That is the western access
3 road, yeah.

4 MR. RICHARDSON: That is the western
5 access road.

6 MR. EVERETT: Oh, sorry.

7 MS. LUCAS: And so when they modeled it,
8 though, they didn't go above Santa Teresa
9 Boulevard, so all the area of Fisher Creek that's
10 normally inundated there, they didn't put that in
11 the model?

12 MR. EVERETT: We began our model where
13 CVRP's stopped. They modeled to a point about 600
14 feet downstream from the CVRP property. And we
15 picked it up from there.

16 MS. LUCAS: And yet the Water District
17 did ask them to model to the 72-hour event --

18 MR. EVERETT: 72 has nothing to do with
19 the flood runoff. What we're talking about, you
20 know, it's a 100-year runoff, and that's what we
21 evaluated as far as the study goes.

22 MS. LUCAS: But the 72-hour has a
23 cumulative impact that is different from the
24 simple 100-year, 24-hour event. Because 24 hours
25 is repeatedly referenced in every item of your

1 analysis, so it is a definite limiting parameter.

2 MR. EVERETT: Can you tell me, you know,
3 where it is you're referenced in our --

4 MS. LUCAS: That you referenced 24 hour?

5 MR. EVERETT: No, 72 hour.

6 MS. LUCAS: Oh, that was in the
7 correspondence. I did not have that because I
8 didn't realize that you had not been aware of that
9 correspondence from the Water District to the
10 Coyote Valley. I will have to produce that and
11 send that to you later.

12 When you talked about the modeling, you
13 talked about the thickness of the aquifer, and
14 there are differing values of that aquifer. On
15 page 515 in the FSA it says it's 500 feet thick.
16 On page 3 it says it's 700 feet thick. Figure 2.5
17 it's 300. Figure 5.3 it's 330. And table 5.1,
18 which I think was the source for your modeling,
19 it's 28 feet to 559 feet.

20 And what I'm wondering is which one
21 actually was used for the modeling when you
22 modeled the groundwater availability.

23 MR. HARRIS: I don't want to object, but
24 I do want to point out that she's asking our
25 witnesses about the final staff assessment, which

1 is staff's testimony. If they're able to answer,
2 they can. But I wanted to make sure we were all
3 clear on that.

4 MS. LUCAS: No, the Coyote Valley
5 groundwater report is the page 3, figure 2.5,
6 that's all the subsequent ones. Just the first
7 was the FSA.

8 MS. PEZZETTI: Could you give me those
9 references again, please?

10 MS. LUCAS: Well, page 515 was the FSA,
11 that was 500 feet. And page 3 on the Coyote
12 Valley groundwater report is 700 feet. Figure 2.5
13 it's 300 feet. Figure 5.3 it's 330 plus. And
14 table 5.1 it says it's 28 feet to 559 feet.

15 That's the alluvium depth.

16 MR. RICHARDSON: We'll answer your
17 question in just a moment. Try to track down all
18 those. We modeled the aquifer, it does have
19 variable thickness from north to south, and so we
20 put the various thicknesses into the model and Ms.
21 Pezzetti is looking up those thicknesses right
22 now.

23 MS. LUCAS: I think that it's, 400 feet
24 is the thickness at Anderson. And then you say it
25 flows south from Cochran Road, so what you want is

1 from Cochran Road north would be what you'd be
2 looking at. And that's why --

3 MR. RICHARDSON: That's correct.

4 MS. LUCAS: -- I think probably your 300
5 or 330 is more accurate one. But then table 5.1
6 which is talking about the modeling says is the
7 one that says 28 feet to 559, and that really
8 throws one.

9 MS. PEZZETTI: The numbers were based on
10 well log depths. And also from published reports.
11 Referring to figure 5-3, page 50 of the
12 groundwater report.

13 MS. LUCAS: Yeah, 5-3 I have no problem
14 with. It's the table 5.1 that was talking about
15 the modeling. Because none of your well depths go
16 over 340, the ones that you give the reference
17 data for.

18 MS. PEZZETTI: The well depths do go
19 that deep. The production wells down by Anderson
20 Dam.

21 MS. LUCAS: That's going south, though.
22 That goes down into Morgan Hill. That's going the
23 other direction. So that modeling is going away
24 from the project site, and not flowing towards the
25 project site. The groundwater basin has a divide

1 where the Shannon earthquake fault comes across.

2 MS. PEZZETTI: The Shannon fault was not
3 modeled as being a groundwater divide.

4 MS. LUCAS: But at Cochran Road, though,
5 you stated in the background data, it says that
6 the groundwater flows south from Cochran Road.
7 And the well depths you are talking about are
8 south of Cochran Road.

9 MS. PEZZETTI: I'm going to refer you to
10 figure 5-9.

11 MS. LUCAS: 5-9m yeah.

12 MS. PEZZETTI: Yeah. You look there, up
13 where it says William F. James Boys Ranch, in that
14 area. That's over near Anderson Dam, just north
15 of Cochran Road.

16 MS. LUCAS: Yeah.

17 MS. PEZZETTI: Those wells down there
18 are about 700 feet deep. Figure 5-9.

19 MS. LUCAS: Oh, 5.9, yeah.

20 MS. PEZZETTI: Page 56.

21 MS. LUCAS: Yeah. That's at the Boys
22 Ranch, right?

23 MS. PEZZETTI: Correct.

24 MS. LUCAS: All right, but that's beyond
25 Cochran.

1 MS. PEZZETTI: No. Cochran Road is --
2 the Boys Ranch is north of Cochran Road. The
3 wells are.

4 MS. LUCAS: But as you look at the Tom
5 E. Ramora cross-section, though, that's just a
6 little bitty dip, and doesn't have the flow going
7 to where you're modeling. That's on the other
8 side of Coyote Creek. It's not on Fisher Creek
9 side.

10 MS. PEZZETTI: I think what we're trying
11 to summarize in the tables are the overall depths
12 within the modeled area. Sometimes they are
13 outside the area, the immediate area of the cross-
14 sections.

15 MS. LUCAS: All the wells that you
16 reference, though, only go up to 340.

17 MS. PEZZETTI: We used other wells
18 outside the referenced wells to develop the model.

19 MS. LUCAS: And that well has been
20 producing regularly at that depth?

21 MS. PEZZETTI: Yes.

22 MS. LUCAS: But it's not referenced
23 anyplace else except for on that one map?

24 MS. PEZZETTI: It's not one of our
25 calibration wells.

1 MS. LUCAS: No. So that was the only --
2 one doesn't know just looking at that map that
3 that was that particular one well depth.

4 How far north of Cochran Road is that
5 one?

6 MS. PEZZETTI: If you look -- are you
7 looking at the figure?

8 MS. LUCAS: Um-hum.

9 MS. PEZZETTI: About where it says
10 William F. James Boys Ranch, it's in the area,
11 right around there.

12 MS. LUCAS: And what is the number on
13 that well?

14 MS. PEZZETTI: There is no number shown.
15 That well is not shown specifically on the figure.

16 MS. LUCAS: Oh, but that is -- how many
17 miles distance is it from the project site, that
18 particular well?

19 MS. PEZZETTI: I don't have a scale, I
20 can't tell you immediately.

21 MS. LUCAS: As you look, it's about as
22 far away from it as you can get, though, isn't it?

23 MS. PEZZETTI: That's true.

24 MS. LUCAS: The other examples that you
25 have were all the 300 to 330 was the maximum, and

1 most of them were even less than that for the
2 aquifer, the usable aquifer.

3 So what I'm wondering is for the
4 modeling would you have just taken the most
5 extreme one, and you say that one depth was how
6 deep?

7 MS. PEZZETTI: In the model the aquifer
8 thickness is variable. So in some areas it's
9 shallow, in some areas it's deeper. The area in
10 the Boys Ranch is the deepest portion of the
11 aquifer, and it was the deepest portion of the
12 model represented.

13 MS. LUCAS: But that, as I say, is not
14 within the drawing level of when you put down a
15 well for servicing this project. It wouldn't draw
16 from that area.

17 MS. PEZZETTI: It's all part of the same
18 aquifer system.

19 MS. LUCAS: You have another map there
20 that very carefully shows the depths, and I don't
21 think that particular well was noted, because the
22 deepest one was 400 feet right at Anderson. It
23 didn't have anything deeper than that on the
24 cross-section.

25 MS. PEZZETTI: Would you be more

1 specific to what you're referring?

2 MS. LUCAS: Which one it is, well, let's
3 see.

4 (Pause.)

5 MR. RICHARDSON: Could I ask, what is
6 your question?

7 MS. LUCAS: Well, the question is how
8 the modeling was done, and this seems to be a very
9 fringe parameter to have thrown into the equation
10 when all the wells that you've referenced, as I
11 say, go only to 310, 330. And I think probably it
12 skews the results.

13 But let me find the other figure that I
14 was looking for.

15 MR. RICHARDSON: So, is your question
16 how thick is the aquifer in the model?

17 MS. LUCAS: What was the one that was
18 used, yeah. What were the parameters used for the
19 model?

20 MR. RICHARDSON: The answer is 28 is the
21 thinnest part that was modeled, and the thickest
22 is 559 feet, as presented in table 5-1 on page 43
23 of the technical memo.

24 And that is the -- it varies, the
25 aquifer thickness varies. And so we modeled it,

1 you can see more of an approximation across the
2 basin if you look on figure 5-5, which has the
3 estimate of alluvium thickness and hydraulic
4 conductivity in the model. It's coded by shades
5 of white and gray with thickness in it. So you
6 can refer to that.

7 And the range on the scale is from zero
8 to 600 feet. And as I said, the thickest area was
9 559 feet.

10 MS. LUCAS: I guess the one I was
11 looking at was the figure 5.3, which is the
12 alluvium thickness in Coyote Valley. And that is
13 the one that doesn't seem to support that
14 evaluation of that particular well. 5.3 alluvium
15 thickness.

16 MR. RICHARDSON: So what is your
17 question?

18 MS. LUCAS: Well, I'm saying that is the
19 official one that I believe Tom E. Ramora and
20 other hydrologists have used in regards to this
21 Coyote Basin, and I'm surprised that that wasn't
22 your guideline.

23 MR. RICHARDSON: That figure, 5-3, is an
24 aerial figure that shows contours of alluvium
25 thickness. And that was one of the pieces of data

1 we used in order to put thickness estimates into
2 the model. And that is from the references
3 McClosky and Fenimore, 1996.

4 MS. LUCAS: Yeah. And that is rather
5 different, it has different figures than what
6 you're quoting with your 559.

7 MR. RICHARDSON: So my response to your
8 question is that we used our best estimates of the
9 thickness from the north end to the south end of
10 the Coyote Valley for a model.

11 MS. LUCAS: Well, --

12 MR. RICHARDSON: And I'll just add, Ms.
13 Pezzetti looked at actual well logs to cross-check
14 and verify the thicknesses reported by McClosky
15 and Fenimore in 1996 document.

16 MS. LUCAS: It would be nice if those
17 well logs had been included in the evidence. But
18 when it wasn't, those well logs weren't included
19 in the base data, so how was one to know.

20 If you have parameters don't you usually
21 use the --

22 HEARING OFFICER VALKOSKY: Ms. Lucas, if
23 you could just ask questions, you know. Your role
24 is to ask questions, not to testify or to render
25 your opinion.

1 MS. LUCAS: All right. In this model
2 also what is the width of the Coyote Valley
3 groundwater basin that you used? Again, on page 3
4 it's stated as 3 miles, and on page 514 in the FSA
5 it's stated as 2 miles.

6 MR. RICHARDSON: It varies. We modeled
7 it according to the dimensions of the valley.

8 MS. LUCAS: But which -- I mean there's
9 a big difference between 2 miles and 3 miles.
10 Which width did you use?

11 MR. RICHARDSON: It varies from the
12 north end of the valley to the south end. It
13 necks down to as narrow as 2 miles and widens out
14 to 3. It's a physical model. It is a finite
15 element model. And it identifies aquifer
16 properties in each finite element. And so it is a
17 three-dimensional model, as Ms. Pezzetti
18 mentioned, and so it is the variable width of the
19 valley and the variable thickness of the aquifer
20 are both used to identify the properties of each
21 element in the model.

22 MS. LUCAS: Now, when you model
23 something like that, you say you used the widest
24 one, and then where it necks down. How do you
25 presume, what value do you give to the biggest end

1 and the narrowest part of that for the model?

2 MR. RICHARDSON: Well, I can --

3 MS. LUCAS: Did you average it out is
4 what I guess I'm asking.

5 MR. RICHARDSON: I'd like to refer you
6 to figure 5-1 in that same report, and you'll see
7 the construction, a representation of the
8 construction of the model. And in that
9 construction you'll see basically each of those
10 polygons in that figure is an element in the
11 model. And each of those elements is in there.

12 So, the thickness -- you can see the
13 thickness or the width of the valley varies in the
14 model, and there's data entered for each one of
15 those, probably several thousand polygons in the
16 model.

17 MS. LUCAS: And that southernmost line
18 is indeed Cochran Road.

19 MR. RICHARDSON: Yes, the southernmost
20 line would be Cochran Road, I believe.

21 MS. LUCAS: Well, I guess then my
22 concerns are with the outflow that's referenced,
23 because if you could model everything on this
24 width and depth of the basin, --

25 MR. HARRIS: Can I ask that a question

1 be posed?

2 MS. LUCAS: Well, there are two areas
3 where they talk about how much outflow comes out
4 of Coyote Valley, and one is 20,000 acrefeet and
5 the other is 5000 acrefeet.

6 And I'm wondering which one is the one
7 they worked with.

8 MR. RICHARDSON: 5000.

9 MS. LUCAS: 5000. Well, now, but on
10 page 18 it's estimated at 20,000 acrefeet per year
11 comes out of that valley.

12 MR. RICHARDSON: Ms. Pezzetti referred
13 to that in her earlier testimony as the annual
14 water budget, that is the amount of water each
15 year that enters and leaves the aquifer. It's the
16 5000 acrefeet per year is one component of the
17 20,000 acrefeet per year of water budget.

18 MS. LUCAS: How can you say water
19 budget? I mean basically what goes into the
20 valley is 20,000; what comes out is 20,000. So
21 how come then --

22 HEARING OFFICER VALKOSKY: Ms. Lucas,
23 just ask a question.

24 MS. LUCAS: Well, I'm trying to find out
25 what the difference is for the water budget the

1 way he is terming the 5000 versus the 20,000.

2 MR. RICHARDSON: Sure, if I can --

3 MS. LUCAS: It doesn't --

4 HEARING OFFICER VALKOSKY: Okay, fine,
5 let's --

6 MS. LUCAS: -- have a rationale that I
7 understand yet.

8 MR. RICHARDSON: I'll address that
9 question.

10 HEARING OFFICER VALKOSKY: -- state that
11 as your question.

12 MR. RICHARDSON: The water budget
13 components are summarized in table 4-1, page 22.
14 Discharge from the valley is from pumping.
15 Discharge surface water consumption by plants.
16 Evaporation. And subsurface outflow. Those are
17 the flows out.

18 Flows in are recharge flows. Deep
19 percolation of rainfall. Deep percolation of
20 irrigation water. Septic system drainage.
21 Seepage from surface water bodies, creeks and
22 canals. And subsurface inflow.

23 And the numbers are summarized in the
24 next table 4-2 on page 23, and they add up to
25 approximately 20,000 acrefeet per year, with 5000

1 of those 20,000 referring to subsurface outflow.

2 MS. LUCAS: So, basically you're saying
3 the 20,000 does, indeed, go into the Santa Clara
4 basin?

5 MR. RICHARDSON: 20,000 acrefeet per
6 year is the annual quantity of water that
7 discharges from the basin and recharges into the
8 basin, and 5000 of the 20, one-fourth, actually
9 discharges through subsurface outflow through the
10 Coyote Narrows. That's our estimate.

11 MS. LUCAS: Well, that is a concern.
12 Have you really looked at the documents of the
13 Water District as far as water supply? Because
14 basically the Anderson Reservoir and Coyote
15 Reservoir are the conduits for all of the water
16 supply that goes into the aquifer is underneath
17 San Jose.

18 And it certainly takes up a lot more
19 than 5000 acrefeet. So I think there's a
20 discrepancy here that doesn't have any rationale.

21 MR. RICHARDSON: So, your question is
22 did we look at the Water District records. Yes.

23 MS. LUCAS: Which Water District records
24 did you look at?

25 MR. RICHARDSON: They provided numerous

1 documents and records to us for our modeling. And
2 let me clarify one thing. Our modeling was
3 relative to the groundwater budget. There is
4 water running down Coyote Creek and into the Santa
5 Clara Valley main basin that is surface water from
6 through the valley. And that is not included in
7 our groundwater budget.

8 MS. LUCAS: But that does indeed
9 percolate into the groundwater south of the
10 Narrows, and after the Narrows, correct?

11 MR. RICHARDSON: The south of the
12 Narrows percolation is in our water budget. It's
13 one of the components of recharge. And it's what
14 we call seepage from surface water bodies, creeks
15 and canals.

16 The water that percolates north of the
17 Narrows, that is not included in the groundwater
18 budget for Coyote Valley. That's for the main
19 basin.

20 MS. LUCAS: But if you find out -- at
21 one point you say that you didn't estimate how
22 much water was put into the Coyote Canal. But
23 that is put back into the Coyote south of the
24 confluence, and by the time you get to the Metcalf
25 gauge, it is already percolated in.

1 So there was no way that you could
2 quantify how much actually went through from the
3 Coyote Valley into the Santa Clara basin. Is that
4 true?

5 MR. RICHARDSON: Is there a question --
6 okay.

7 HEARING OFFICER VALKOSKY: Ms. Lucas,
8 you've really got to stop testifying and just ask
9 direct questions.

10 MS. LUCAS: Well, it's just that --

11 HEARING OFFICER VALKOSKY: Really.

12 MS. LUCAS: -- I don't find in their
13 data anything I recognize from what I have
14 historically found in the library at the Water
15 District. And I'm having a problem with this,
16 because Tom E. Ramora, who was their groundwater
17 expert, used that 20,000 acres --

18 HEARING OFFICER VALKOSKY: Okay, that's
19 fine, then. Just pose it in questions. You can
20 ask them what sources they explained, whether
21 there are any discrepancies with other sources,
22 the reasons for those discrepancies, the reasons
23 for their choices. That's what you ought to be
24 doing.

25 MS. LUCAS: Well, where do you quantify

1 the water that is put into the Coyote Canal that
2 is used for percolation that passes through the
3 Coyote Valley and then gets into the Santa Clara
4 basin?

5 MR. RICHARDSON: The seepage from the
6 canal and the creek are quantified as the 17,000
7 acrefeet of recharge in table 4-2.

8 MS. LUCAS: This is not seepage. You
9 have a map that shows that it actually empties
10 into Coyote Creek, so everything, all the water
11 that's being conveyed in the canal is put into
12 Coyote Creek south of the project site --

13 HEARING OFFICER VALKOSKY: Ms. Lucas,
14 those are statements. Ask questions, please, for
15 the witnesses.

16 MS. LUCAS: Well, if you look at the map
17 of the Coyote Canal it shows that it goes into the
18 Coyote Creek south of the project. So I'm asking
19 how much water is delivered to Coyote Creek at
20 that point in the Canal, from the Canal, is not
21 seepage, but direct delivery?

22 MR. RICHARDSON: I'll ask Ms. Pezzetti
23 to answer that question.

24 MS. PEZZETTI: In development of the
25 groundwater model we had gauge measurements on

1 Coyote Creek at Anderson and a couple of other
2 places on it, and at Metcalf Road. Those flow
3 rates were taken into account and helped us
4 identify how much water was seeping into the
5 aquifer from Coyote Creek, as well as identify how
6 much water was flowing, continued to flow along
7 Coyote Creek out into the Santa Clara basin.

8 PRESIDING MEMBER LAURIE: Let me
9 interrupt a moment. Staff, during the course of
10 the preparation for these evidentiary hearings,
11 were there staff workshops on water?

12 MS. WILLIS: Yes, there were. I can't
13 remember exactly how many, but at least -- I mean
14 several.

15 PRESIDING MEMBER LAURIE: Because this
16 is information gathering that we're doing here.
17 Were these questions brought up to this level of
18 detail in the workshops, Ms. Willis or Mr. --

19 MS. WILLIS: I'm going to have Mr.
20 Richins answer that.

21 MR. RICHINS: Yes, we had numerous
22 workshops on water, water budgets, water modeling.
23 We involved all the local agencies, including the
24 Water District.

25 They reviewed the modeling work. They

1 reviewed all the assumptions. Our staff, as well,
2 reviewed the assumptions. And my understanding
3 there was concurrence that the assumptions and
4 modeling that was done by the applicant was
5 correct and appropriate.

6 PRESIDING MEMBER LAURIE: Okay, well,
7 then my point to Ms. Lucas and the party, what
8 you're doing is you're really asking very
9 technical questions that could have, and in the
10 Committee's view, should have been discussed in a
11 much more informal setting prior to today, so that
12 you would have had the answers you needed to ask
13 the witnesses why didn't they do something.

14 And so, we are now listening to those
15 preliminary questions that you're gathering so
16 that you can ask further questions.

17 The Committee will permit some
18 additional questioning along that line, but we
19 can't use this proceeding as your discovery
20 process.

21 MS. LUCAS: I apologize. Basically I
22 have asked these questions all along the line.
23 I'm just not comfortable with the fact that this
24 5000 acrefeet is considered the supply that's
25 necessary. And that's why -- I have not been

1 given any written answers and I'm still finding
2 the same, what I feel errors, in the base
3 document.

4 I apologize, but I guess that'll just
5 have to be.

6 PRESIDING MEMBER LAURIE: Okay, well, if
7 you have questions about the technique or the
8 process, you're certainly free to ask why did you
9 not follow a certain process. But you don't have
10 to ask all the foundational questions leading up
11 to it.

12 MS. LUCAS: I guess my questions that I
13 tried to lay this base was did they consider the
14 entire watershed, the 229 square miles, because
15 that basically drains to Fisher Creek.

16 PRESIDING MEMBER LAURIE: Okay, for
17 example, --

18 MS. LUCAS: For example.

19 PRESIDING MEMBER LAURIE: -- if you
20 already know the answer to that, then ask why
21 didn't you do this. You don't have to ask, did
22 you do this, because you already know the
23 answer --

24 MS. LUCAS: Well, I think, --

25 PRESIDING MEMBER LAURIE: -- to that

1 question.

2 MS. LUCAS: -- it's very technical, all
3 right. Maybe what I did, they ignore the 229
4 upper watershed square miles.

5 PRESIDING MEMBER LAURIE: Well, that is
6 sort of a legitimate question. Okay, so proceed
7 as you were. I would just ask you to focus on
8 those issues that you really need to get to, and
9 ask very pointed and directed questions of these
10 witnesses.

11 MS. LUCAS: All right, basically that
12 upper watershed is one-third of the County, and
13 this is basically a watershed supply.

14 In what area of this document is this
15 reflected, that this one-third of the County is
16 supplying water to the City of San Jose, and
17 passes through this valley? Where is that
18 reflected in this document in this modeling?

19 MR. RICHARDSON: Specifically in the
20 table 4-2, scenario 1, where we have the water
21 budget. The fourth item under recharge is called
22 seepage from water bodies, creeks and canals,
23 17,000 acrefeet. That is the difference between
24 what flows into the basin at Anderson Dam, the
25 stream flow measurement. That number minus the

1 flow out of the Narrows at Metcalf. And the
2 difference between inflow and outflow from the
3 basin determines the seepage into the Coyote
4 groundwater basin.

5 So we did take into account all the
6 surface water flow coming into Coyote Valley from
7 the upper watershed.

8 MS. LUCAS: I'm afraid I feel this is a
9 gross understatement. I will have to take this up
10 with the Water District. Obviously I'm sorry for
11 taking up this much of your time, but we just seem
12 to be in an unusual discrepancy that a public
13 document shouldn't be allowed to remain.

14 I guess my other concerns would be then
15 with the fact that if this County property, where
16 is it stated that the 150-foot riparian setback
17 will be acknowledged? I'm concerned about the
18 tree loss and erosion with the flood aspects of
19 Fisher Creek. And I'm wondering if there's
20 anyplace that that is addressed.

21 MR. RICHARDSON: We addressed the 100-
22 foot riparian setback, which is the City's
23 requirement.

24 MS. LUCAS: No, the County, 150 is the
25 County's. You addressed the 100-foot setback,

1 which is the City's. But I am finding no place
2 where the County's 150-foot setback is. If you
3 can show me where that is addressed?

4 MR. RICHARDSON: No, I cannot.

5 MS. LUCAS: Earlier in the testimony it
6 was stated the retention basin was indeed set back
7 150 feet from the Creek and it was within the
8 County guidelines.

9 Is that someplace I could find?

10 MR. RICHARDSON: Dr. Byron, if you'd
11 like to respond to that? Was there a question?
12 What was the question?

13 DR. BYRON: Could you repeat --

14 MS. LUCAS: The question was you stated
15 earlier that the retention basin respected the
16 150-foot setback that the County had for their
17 riparian policy. And I am not able to find any
18 reference to that. I don't see a physical map
19 that depicts where the retention basin is. And I
20 was wondering if you could tell me where I could
21 find that 150-foot setback.

22 DR. BYRON: I don't believe that I
23 stated that. In fact, I'm sure that I didn't. I
24 think instead my statement was to the riparian
25 setback without mentioning the number of feet that

1 that setback was representing.

2 I just talked about, I used the words, I
3 believe, riparian setback.

4 MS. LUCAS: I thought that was a
5 question that the City of San Jose -- I'm sorry.
6 Well, it was an answer to a question that Mollie
7 Dent asked about the retention basin. Can anyone
8 answer it, maybe?

9 MR. RICHARDSON: What's the question?

10 MS. LUCAS: Well, she asked if indeed
11 the City of San Jose had not annexed this
12 property, that was the retention basin going to
13 respect the 150-foot setback that the County
14 demands in the riparian corridor policy.

15 MR. HARRIS: I'm going to object on the
16 basis that the question is asking the witness to
17 apply County LORS to a project component that's in
18 the City. I think that's the basic disconnect
19 here.

20 MS. LUCAS: I believe it's in the
21 County.

22 HEARING OFFICER VALKOSKY: Let's just
23 see if the witness can answer this. Did you do
24 any analysis about that?

25 MR. RICHARDSON: I think Mr. Abreu was

1 going to --

2 HEARING OFFICER VALKOSKY: Okay. That's
3 fine. And then, Ms. Lucas, we'll move on?

4 MS. LUCAS: All right. I guess --

5 HEARING OFFICER VALKOSKY: Let the
6 witness answer. Mr. Abreu.

7 MR. ABREU: We're in compliance with the
8 LORS and the setback requirements with our
9 retention pond.

10 MS. LUCAS: With the County's setback?

11 MR. ABREU: We're in compliance with the
12 LORS for our setback with the pond.

13 MS. LUCAS: The laws, did you say?

14 MR. ABREU: That's right, laws,
15 ordinances, regulations and standards.

16 MS. LUCAS: Of the County, 150 feet?

17 MR. ABREU: We're in compliance with all
18 of the applicable LORS.

19 HEARING OFFICER VALKOSKY: Okay, we've
20 got the answer.

21 MS. LUCAS: Is this shown in any place
22 in the documents was my original question, because
23 I can't find this.

24 MR. HARRIS: The witness has answered
25 the question.

1 HEARING OFFICER VALKOSKY: Yes, we've
2 got the testimony from the witness, okay?

3 MS. LUCAS: My last question then is the
4 use of the 1982 FEMA maps, I have some castaways
5 from the Soil Conservation Service from 1993, and
6 those were only given out because something more
7 up to date had been generated.

8 And since these are federal agencies I'm
9 surprised that there is not a more up-to-date
10 federal flood map. And I'm wondering if maybe
11 there was one available that wasn't used, or is
12 that anywhere in your technical background data?

13 MR. RICHARDSON: Mr. Everett will
14 respond to this.

15 MR. EVERETT: In the first, you know, in
16 the first version of the report the old data from
17 the old 1982 flood plane was used. And the
18 District pointed out to us that that was outdated.
19 The flow was low and the levees weren't treated,
20 you know, as engineered -- or they were treated,
21 you know, as engineered levees, which meant that
22 they wouldn't fail.

23 They had asked us to -- or actually they
24 had -- there were two things going on at that
25 time. CVRP was doing their stuff upstream, their

1 analysis by Shaff and Wheeler, and they did
2 reevaluate the 100-year event on Fisher Creek and
3 found it to be considerably higher than the 1982
4 event.

5 And as a result new flood plane maps
6 were created, but only for the purposes of this
7 study. My understanding is Shaff and Wheeler is
8 currently preparing a CLOMR for FEMA, you know,
9 conditional -- revision, but it hasn't been
10 officially approved at this time, you know, by
11 FEMA yet. But it's in the process.

12 MS. LUCAS: But, as I say, if I received
13 from the Soil and Conservation Service their
14 castaway 1993 flood maps of this area, they would
15 only have given them out if they had something
16 more up to date than 1993.

17 So is that what Shaff and Wheeler are
18 going to be doing, is an update of the 1993 plus,
19 or what are they updating?

20 MR. EVERETT: No, they're going to be
21 updating with the current data. Those maps don't
22 apply to, you know, or flood, you know, insurance
23 rate maps, which is what FEMA requires.

24 They don't have the information yet for
25 that. They will soon now, as a result of this

1 effort. But, you know, nothing formally is out
2 there right now.

3 MS. LUCAS: FEMA has nothing, you say?

4 MR. EVERETT: Not yet.

5 MS. LUCAS: Not yet. When will they be
6 received --

7 MR. EVERETT: I can't speculate to that.

8 MS. LUCAS: Will it affect the design of
9 the levees for this project?

10 MR. EVERETT: No.

11 MS. LUCAS: You feel that they're
12 completely in compliance for the reflux from
13 Coyote because you have that --

14 MR. EVERETT: We took into
15 consideration, you know, the higher flows that was
16 created by, you know, Shaff and, you know,
17 Wheeler. They took into consideration, you know,
18 a larger basin, you know, more runoff. And that's
19 what we used to make our studies for, you know,
20 the Metcalf site.

21 There's water all over the place, you
22 know, that under, you know, the 100-year event.
23 It's over the top of all the, you know, levees,
24 such as they are, on Fisher Creek, which are
25 considered to be, you know, unengineered levees,

1 as I said. And they will fail under, you know, a
2 100-year event according to FEMA. That's how they
3 prefer to see it treated.

4 So the new maps already in the evidence
5 show, you know, water over topping. And something
6 like that will eventually, you know, lead to, you
7 know, to a new -- or flood insurance rate map.

8 MS. LUCAS: But you don't plan to
9 improve the levees in --

10 MR. EVERETT: No.

11 MS. LUCAS: -- particular to ward off
12 this problem?

13 MR. EVERETT: No.

14 MS. LUCAS: And that cutdown for the
15 PG&E access across the creek is not going to be a
16 hazard?

17 MR. EVERETT: No.

18 MS. LUCAS: That sort of backup?

19 MR. EVERETT: It'll just assume the
20 flood over at that point.

21 MS. LUCAS: But again I'm concerned
22 about the 24-hour versus the 72-hour --

23 MR. EVERETT: The 24, that has nothing
24 to do with the duration of the 100-year event. It
25 has, you know, its own hydrograph. You know, it's

1 not time related.

2 MS. LUCAS: I'll have to get that --

3 MR. HARRIS: What's the question? Is
4 there a question?

5 MS. LUCAS: I'm just concerned about the
6 cumulative of this new updated map with the
7 precipitation. Again, I'm concerned about the
8 fact that they took the average and they didn't
9 necessarily go into the upper watershed for what
10 the rain levels are up there.

11 MR. HARRIS: Is there a question for the
12 witness?

13 MS. LUCAS: Well, is the rainfall that
14 you used, the average rainfall, the 17 inch, is
15 that right, for the precipitation --

16 MR. EVERETT: 17 inches --

17 MS. LUCAS: -- average, for the
18 average --

19 MR. EVERETT: Where?

20 MS. LUCAS: For this project area. For
21 the yearly average.

22 MR. EVERETT: No.

23 MS. LUCAS: No. Well, what was your
24 yearly average for the project area?

25 MR. EVERETT: Oh, yearly average?

1 MS. LUCAS: Yes.

2 MR. EVERETT: I don't know offhand.

3 MR. RICHARDSON: Is the question related
4 to the design storm?

5 MS. LUCAS: Yes, I thought it was,
6 but --

7 MR. RICHARDSON: For flood control
8 purposes?

9 MS. LUCAS: For cumulative impact, I'm
10 just concerned.

11 HEARING OFFICER VALKOSKY: Ms. Lucas,
12 did you address these questions to the applicant
13 or staff during previous workshops?

14 MS. LUCAS: In the follow-up letter, I
15 believe, yes, um-hum.

16 HEARING OFFICER VALKOSKY: And --

17 MS. LUCAS: Not necessarily --

18 HEARING OFFICER VALKOSKY: -- what is
19 your purpose of bringing up --

20 MS. LUCAS: Well, I feel that the
21 project is in a terribly -- it's the Achilles's
22 heel of the entire area. And I feel that the
23 flood problems have been understated. Some of my
24 concern has also been from looking at the Coyote
25 Valley research, and the Water District concerns

1 about that.

2 And I just feel that they don't have the
3 room to give the levees the proper beef-up, and
4 the padding up isn't going to be conservative
5 considering the high water table underneath.

6 It's just a terribly terribly sensitive
7 site. And I just -- I'm worried about the fact
8 that the access, emergency access road will be
9 inundated and --

10 HEARING OFFICER VALKOSKY: Okay, I'm not
11 sure that the witnesses can address your worries.
12 The witnesses can provide factual information.
13 That's the extent of what they can do.

14 So, if you have any questions --

15 MS. LUCAS: Well, I --

16 HEARING OFFICER VALKOSKY: -- directly
17 addressing --

18 MS. LUCAS: My biggest one was the
19 supply of the water that's passing through the
20 area, the volume. And I think that is
21 understated. But their data they're looking at --

22 HEARING OFFICER VALKOSKY: Okay, and you
23 don't have to agree with it, but they have
24 provided their answers to that.

25 MS. LUCAS: So, as I say, I will try to

1 argue this at the Santa Clara Valley Water
2 District level, because I don't think they've
3 spoken to --

4 MR. HARRIS: Can we be off the record?

5 MS. LUCAS: Yes, I'm sorry, --

6 HEARING OFFICER VALKOSKY: Yes, let's go
7 off the record.

8 (Off the record.)

9 HEARING OFFICER VALKOSKY: Anything
10 further from Santa Teresa, Ms. Cord?

11 MS. CORD: Nothing further.

12 HEARING OFFICER VALKOSKY: Thank you,
13 ma'am. Mr. Ajlouny.

14 MR. AJLOUNY: Yes, I just have a few
15 questions, but can I have Mr. Scholz go first?
16 Would you mind?

17 HEARING OFFICER VALKOSKY: Mr. Scholz
18 isn't on the list as I have it. But, giving the
19 latitude for which we are known, you can have a
20 couple of --

21 (Laughter.)

22 HEARING OFFICER VALKOSKY: -- you can
23 have a couple of questions, Mr. Scholz.

24 MR. BOYD: Such a nice guy.

25 MR. SCHOLZ: I don't expect these to

1 take very long. My computer had to reboot, so,
2 please -- it's coming up.

3 INTERVENOR: While we're waiting, can
4 Libby ask a few questions?

5 (Laughter.)

6 HEARING OFFICER VALKOSKY: Are you going
7 to go now, Issa?

8 Off the record.

9 (Off the record.)

10 HEARING OFFICER VALKOSKY: Regarding a
11 discussion among parties, we're informed Mr. Boyd
12 has three questions. You are on the list as CARE,
13 proceed, Mr. Boyd.

14 CROSS-EXAMINATION

15 BY MR. BOYD:

16 Q Okay, my first question is, and I'm
17 looking for anyone to answer this, is there, in
18 your experience have any of you ever been involved
19 in a development project where the local
20 jurisdiction, whether it be a city or a county,
21 through some state edict or statute, was able to
22 force that local jurisdiction to provide service,
23 either water or sewer, outside of its boundaries?
24 In your experience.

25 MR. RICHARDSON: Boy, that was a long

1 question. Could you repeat the essence of it?

2 MR. BOYD: Basically in your experience
3 have you, specifically we can talk about a city,
4 have you ever had any experience where a city has
5 been required by any state agency to provide water
6 or sewer service outside of the incorporated
7 boundaries of the city?

8 MR. RICHARDSON: Yes, yes, I have.

9 MR. BOYD: Outside of their discretion?

10 MR. RICHARDSON: Yes.

11 MR. BOYD: Outside of their discretion?

12 MR. RICHARDSON: Yes.

13 MR. BOYD: Can you tell me the specific
14 case?

15 MR. RICHARDSON: Yes. It's very common
16 for the State Health Department to require
17 jurisdiction municipalities to provide service to
18 users outside of their jurisdictional boundaries.

19 MR. BOYD: And was that a commercial
20 user, or a, like a --

21 MR. RICHARDSON: It's for potable water.
22 It was potable water use for commercial and
23 residential.

24 MR. BOYD: And in your experience have
25 you ever heard of this happening with a reclaimed

1 water supply?

2 MR. RICHARDSON: Yes, indirectly through
3 the state requirements, yes, I have had that
4 experience with state requirements leading the
5 city to provide reclaimed water service outside of
6 its service territory.

7 MR. BOYD: And how about the sewer
8 service, the same?

9 MR. RICHARDSON: Yes.

10 MR. BOYD: The sewer service?

11 MR. RICHARDSON: Yes.

12 MR. BOYD: Do you have any specific
13 cases or developments that you could cite for
14 that?

15 MR. RICHARDSON: The cases I'm familiar
16 with specifically are in the City of Santa Rosa,
17 the County of Sonoma.

18 MR. BOYD: Okay, and could you elaborate
19 on what happened in that case a little bit?

20 MR. HARRIS: I'm going to object.

21 You're past three questions --

22 (Laughter.)

23 MR. HARRIS: I'm not sure it's relevant
24 to this particular proceeding. I object on that
25 basis.

1 MR. BOYD: Why isn't it relevant if
2 we're in the situation right now?

3 HEARING OFFICER VALKOSKY: Well, one, we
4 don't know if it's directly applicable to the fact
5 situation that we have before us. I think that's
6 the basis for the relevancy objection.

7 MR. BOYD: The City hasn't informed you
8 that they don't intend to provide you sewer and
9 water service. Why isn't it relevant?

10 HEARING OFFICER VALKOSKY: Well, now
11 I've forgotten what the question was.

12 MR. RICHARDSON: I did, too.

13 (Laughter.)

14 MR. BOYD: I was asking for him to give
15 me a description, and he cited a case in Sonoma
16 County, Santa Rosa, where the city was forced to
17 provide service outside its jurisdiction, is my
18 understanding of what his response was.

19 I wanted more specifics, that's all.

20 HEARING OFFICER VALKOSKY: Give me a
21 three or four line summary of your understanding
22 of the Sonoma County case.

23 MR. RICHARDSON: Yes, that's the cases
24 I'm familiar with. One's called Willow side area,
25 outside of the city's boundaries, in the county's

1 boundaries. And the city was required to provide
2 water and sewer service.

3 MR. BOYD: By? Who required them?

4 MR. RICHARDSON: The State Health
5 Department, and the Regional Water Quality Control
6 Board.

7 MR. BOYD: Okay. Now, in your
8 experience has that ever happened with any other
9 state agency besides an agency specifically
10 established to address the issue of water supply
11 or sewer service like this, the Regional Water
12 Quality Control Board, for example? Like the
13 Coastal Commission, or something like that.

14 MR. RICHARDSON: I'll ask if any of the
15 others on the panel have any specific experience.

16 MR. HARRIS: Can I ask him to restate
17 the question. He lost me with the list of
18 agencies. Restate the question, if you would?

19 MR. BOYD: Basically I'm just trying to
20 find out if there's any other precedent for a
21 state agency forcing a city to provide water and
22 sewer service to a development outside their
23 jurisdiction.

24 PRESIDING MEMBER LAURIE: In the
25 personal knowledge of any of the witnesses. Do

1 you have any personal knowledge in regards to that
2 question?

3 MR. RICHARDSON: I'll ask Kris Helm.

4 MR. HELM: I was trying to recall -- I'm
5 having trouble recalling some specific instances
6 of the Governor exercising emergency powers during
7 the drought of 1976/77 and 1992, and my memory is
8 a little hazy on this, so I'm reluctant to answer.

9 MR. BOYD: An executive order, you mean?

10 MR. HELM: Yes.

11 MR. BOYD: It wasn't a legislative
12 action, it was an executive order.

13 MR. HELM: No. This was the Governor
14 acting under his emergency powers.

15 MR. BOYD: Okay.

16 MR. RICHARDSON: Dr. Dickey, would you
17 like to share your experience with the Department
18 of Water and Power?

19 DR. DICKEY: The Department of Water and
20 Power is about to deliver about 50,000 acrefeet a
21 year for dust control on the Owens Dry Lake, which
22 is in Inyo County, well out of their service area.
23 Their responsibility for that was established by a
24 Senate Bill back in the early 1980s.

25 MR. BOYD: Okay, thank you. Okay, my

1 second question regards I heard a discussion of
2 you were mentioning two wells that would be
3 developed 1000 -- what was it, 1000 yards or 1000
4 feet south of the proposed project, is that
5 correct?

6 MR. RICHARDSON: Approximately that.

7 MR. BOYD: And now would this well
8 supply water in the contingency that reclaimed
9 water wasn't available for this project?

10 MR. RICHARDSON: Those wells were sited,
11 and we did the analysis on the basis of the
12 assumptions that Ms. Pezzetti shared earlier, that
13 would be for outages of recycled water, not for
14 the lack of recycled water.

15 MR. BOYD: Now, theoretically if you
16 didn't have this recycled water, would this then
17 become your water supply?

18 MR. RICHARDSON: That would be
19 inconsistent with the conditions of certification
20 and inconsistent with our analysis.

21 MR. BOYD: So your analysis didn't
22 assume that it would, in any situation, be used
23 for any period in excess of what was for emergency
24 use?

25 MR. RICHARDSON: That's correct.

1 MR. BOYD: So if you don't have
2 reclaimed water, you don't have water supply, is
3 that true?

4 MR. RICHARDSON: It's a condition of
5 certification in the FSA.

6 MR. BOYD: The reason I'm asking is I'm
7 curious to know if there was any modeling done of
8 the drawdown of the aquifer and the effect on the
9 Tulare Hill and the associated vernal springs
10 there, if you were drawing from those wells for a
11 long period of time.

12 MR. RICHARDSON: No.

13 MR. BOYD: I'm curious to know if that
14 was analyzed?

15 MR. RICHARDSON: It was not.

16 MR. BOYD: Okay, my last question is for
17 Ken. And, Ken, when you were giving your
18 testimony you mentioned, I thought I heard you
19 mention it was either findings or certificate of
20 public convenience or necessity.

21 Now, were you talking about the
22 Commission making these findings, or were you
23 talking about the Public Utilities Commission
24 doing a certification such as this?

25 My understanding was it was the Public

1 Utilities Commission that did that, is that
2 correct? Or am I wrong, did I misinterpret what
3 you said? Can you clarify that for me?

4 PRESIDING MEMBER LAURIE: Mr. Boyd, let
5 me -- his testimony was a citation of the Energy
6 Commission's override statutory authority. And he
7 was just citing that, he was just using that
8 language verbatim. And that's all it was.

9 So, what's your question in regards to
10 that?

11 MR. BOYD: Well, he was citing that as a
12 means for the applicant, it seemed to me, for the
13 applicant to compel the City to provide the
14 services that they seek.

15 And my understanding of that authority
16 is that is not the case. It only applies to the
17 land use decision.

18 And so I'm confused here. So, --

19 HEARING OFFICER VALKOSKY: Mr. --

20 MR. BOYD: -- that his testimony.

21 HEARING OFFICER VALKOSKY: Mr. Boyd,
22 you're addressing a legal point --

23 MR. BOYD: Is there a problem with that?

24 HEARING OFFICER VALKOSKY: -- to the
25 extent --

1 MR. BOYD: I thought this was like an
2 administrative litigation process.

3 HEARING OFFICER VALKOSKY: The point is
4 Mr. Abreu is not an attorney.

5 MR. BOYD: Ah, my --

6 HEARING OFFICER VALKOSKY: And I take
7 it, neither are you?

8 MR. BOYD: -- question is to anyone. If
9 there's anyone -- he cited that in his testimony,
10 I'm referring to his testimony. If he cited that
11 in his testimony he should have knowledge of it.

12 PRESIDING MEMBER LAURIE: Mr. Boyd, in
13 all the testimony that we went through a couple
14 hours ago, he stated his opinion that in the
15 opinion of the applicant that they could mandate
16 certain services. And that was as far as it went.

17 Other parties are free to argue opposite
18 points of view, --

19 MR. BOYD: Well, I was looking for the
20 statutory basis for that statement.

21 PRESIDING MEMBER LAURIE: Well, there
22 were questions about that, and the witness already
23 testified about that, and the Committee will not
24 pursue that line of questioning at this time.

25 MR. BOYD: Okay, thank you, that's all

1 my questions.

2 HEARING OFFICER VALKOSKY: Thank you.

3 Mr. Scholz.

4 MR. SCHOLZ: All of my questions are in
5 regards to the SBWR routing.

6 CROSS-EXAMINATION

7 BY MR. SCHOLZ:

8 Q How long will it take to construct the
9 SBWR pipeline?

10 MR. RICHARDSON: We've estimated it
11 would be about 18 months. It could be done more
12 rapidly than that. And it would depend on the
13 particulars of who constructed the line.

14 MR. SCHOLZ: Since there's a range, can
15 you provide a range that you could complete it in,
16 other than the 18 months you just testified to?

17 MR. RICHARDSON: We've looked at
18 estimates of ranges as short as one 12-month
19 construction season, up to more like an 18-month
20 construction period.

21 MR. SCHOLZ: Was the applicant involved
22 in notifying anyone along that pipeline route that
23 there was going to be a pipeline constructed?

24 MR. RICHARDSON: I'll ask if anyone else
25 on the panel has specific knowledge of this.

1 I don't know.

2 MR. SCHOLZ: Is this the proper topic
3 area to ask this question?

4 MR. RICHARDSON: If that's a question
5 for me, I don't know.

6 MR. SCHOLZ: Stan, I don't know if you
7 heard that last question?

8 HEARING OFFICER VALKOSKY: No, Scott, I
9 did not hear the question.

10 MR. SCHOLZ: The question I asked was
11 the applicant involved in notifying anyone along
12 the pipeline route that there was going to be a
13 pipeline constructed.

14 And the panel does not know. So is this
15 the proper to ask this question?

16 HEARING OFFICER VALKOSKY: Well, I mean
17 it's been asked. You have the answer.

18 MR. SCHOLZ: Is there another topic area
19 where --

20 HEARING OFFICER VALKOSKY: They don't
21 know.

22 MR. SCHOLZ: -- applicant can answer
23 that question?

24 HEARING OFFICER VALKOSKY: There is
25 not -- no, I mean I guess this would certainly be

1 appropriate, since it's dealing with the pipeline
2 here. But, again, the answer is, unfortunately,
3 as I interpret what they've said that they don't
4 know.

5 MR. SCHOLZ: Nobody in their company
6 knows whether they were involved --

7 HEARING OFFICER VALKOSKY: I don't know
8 that. You can ask the witnesses what they know,
9 Scott, and that's the answer that they'll provide.

10 MR. SCHOLZ: All my questions are
11 stemming from there, so I guess I would have to
12 wait till the staff makes their presentation.

13 HEARING OFFICER VALKOSKY: Okay, that
14 could be appropriate, too.

15 Mr. Ajlouny.

16 CROSS-EXAMINATION

17 BY MR. AJLOUNY:

18 Q Following up on Mr. Scholz' question,
19 should the public be notified about this pipeline?

20 MR. RICHARDSON: Is that a question for
21 me?

22 MR. AJLOUNY: Yes.

23 MR. RICHARDSON: I don't know
24 specifically whether that's appropriate for this
25 specific type of procedure.

1 MR. AJLOUNY: So you don't know if
2 there's any like City ordinance or something, that
3 if you're going to tear up the street,
4 inconvenience citizens, that they don't notify the
5 public first, get them in the process?

6 MR. RICHARDSON: At the stage of an AFC
7 process related to a power plant and the linear
8 facilities associated with it, no, I'm not aware
9 of a specific ordinance or requirement to notify
10 the public along the linears.

11 MR. AJLOUNY: Okay. Do you think it
12 might be a good idea?

13 MR. HARRIS: I'm going to object --

14 HEARING OFFICER VALKOSKY: Okay, Issa,
15 that's --

16 MR. AJLOUNY: Okay, I withdraw --

17 HEARING OFFICER VALKOSKY: --
18 speculative --

19 MR. AJLOUNY: -- the question.

20 HEARING OFFICER VALKOSKY: Okay.

21 MR. AJLOUNY: I'm a nice guy today. It
22 was stated earlier that the west access road could
23 possibly be flooded. And the way I understand the
24 west access road is that's the one coming off of
25 like Santa Teresa, not the panhandle that we

1 mentioned yesterday, is that correct?

2 MR. RICHARDSON: Yes, that's correct.

3 MR. AJLOUNY: As I understand it that
4 was going to be the routing, and I don't want to
5 get into an area that's not for you, but that was
6 supposed to be the routing of, you know, the
7 ammonia truck and so forth.

8 As I understood, because the train
9 tracks were not going to -- you weren't allowed to
10 go over the train tracks with the ammonia truck,
11 is that correct?

12 MR. RICHARDSON: I think that question
13 would be appropriate for the traffic and
14 transportation session, not this one.

15 MR. AJLOUNY: Okay, in hypothetical --
16 I'm learning some neat words here -- if there was
17 a case that an ammonia truck could not go over
18 railroad tracks, would this be considered the
19 primary route for an ammonia truck?

20 MR. HARRIS: I'm going to object to the
21 question.

22 MR. AJLOUNY: It's a hypothetical, I
23 thought.

24 HEARING OFFICER VALKOSKY: Okay, no,
25 it's not the form of a question. It's whether

1 it's within the scope of the expertise of these
2 witnesses.

3 MR. AJLOUNY: Okay, would it be a
4 concern --

5 HEARING OFFICER VALKOSKY: Is it -- just
6 a minute. Sir, are you prepared to address the
7 routing of the ammonia truck?

8 MR. RICHARDSON: No.

9 HEARING OFFICER VALKOSKY: Thank you. I
10 would suggest that that's a transportation or
11 hazardous materials issue, myself.

12 MR. AJLOUNY: Okay.

13 HEARING OFFICER VALKOSKY: The witnesses
14 can't address it.

15 MR. AJLOUNY: So, I guess, for the
16 record, that road could be -- and this is because
17 of my lack of knowledge -- that road could be
18 flooded at some time if we had enough rain or
19 something? Is that what I understood in earlier
20 testimony?

21 MR. EVERETT: Yes.

22 MR. AJLOUNY: Okay, so we'll just hold
23 that thought until we get to transportation, but
24 that road could be flooded. All right.

25 And then I think I have one more. Oh,

1 two more.

2 You mentioned that it takes 18 months to
3 build the pipeline for the recycled water,
4 possibly, if people are organized and worked hard
5 you might get it as low as 12 months.

6 Have you estimated how long it might
7 take to get permits and the authority to start
8 building that pipeline?

9 MR. RICHARDSON: We've made some
10 estimates to that.

11 MR. AJLOUNY: And what are those
12 estimates?

13 MR. RICHARDSON: My recollection is
14 approximately 12 to 18 months for permitting,
15 environmental, any supplemental environmental that
16 need to be done.

17 MR. AJLOUNY: So, if we take the minimum
18 of 12 months that you just mentioned, and the
19 minimum of 12 months to build the pipeline from
20 start to finish, once -- or if this -- maybe I'll
21 ask once he's listening -- I don't want to -- you
22 guys want to talk and I'll ask him in a second.
23 Go ahead.

24 (Pause.)

25 MR. RICHARDSON: Okay, I'm ready.

1 MR. AJLOUNY: All right. So, just to
2 recap, you're still standing to the 12 to 18
3 months on the permits, or you've changed -- well,
4 I'll just ask that question.

5 MR. RICHARDSON: What I was referring to
6 was the period of time it takes to go through
7 those processes. But taking into account the
8 overlap of permitting, design and construction, we
9 estimated that that would take between 18 and 24
10 months total, from permitting, through design, to
11 construction, and ready for startup.

12 MR. AJLOUNY: Okay, first of all, could
13 you talk in the mike because I'm past 40 and my
14 ears are gone.

15 MR. RICHARDSON: The question is --

16 MR. AJLOUNY: Let's break it into two
17 pieces. Well, let's make it easy for you.
18 Beginning, I would imagine you don't start permits
19 until you get some kind of authority like, you
20 know, until the Commissioners say go or something.

21 So, from that point how long does it
22 take to go through the permits and complete the
23 pipeline for the recycled water?

24 MR. RICHARDSON: Eighteen to 24 months
25 total.

1 MR. AJLOUNY: And that estimate, is that
2 documented in your testimony anywhere?

3 MR. RICHARDSON: I don't recall if it's
4 documented in our testimony.

5 MR. AJLOUNY: Okay. And was that a
6 different number before the City Council vote or
7 after the City Council vote? Or has that been the
8 same all along?

9 MR. RICHARDSON: Yeah, no different.

10 MR. AJLOUNY: No different. My lack of
11 experience, when do you actually start the process
12 of trying to get permits? You know, I guess
13 that's the first thing is trying to get permits
14 and stuff. When would that happen?

15 MR. RICHARDSON: Our response is we are
16 in the process of getting the environmental
17 document certified, and therefore are formally in
18 a permitting process.

19 But the construction of the pipeline
20 facilities would not begin until the construction
21 authority was granted for the project as a whole.

22 MR. AJLOUNY: Well, my concern is the
23 time that it would take to get permits to start
24 construction for this project, and keeping in mind
25 the City's concerns of --

1 MR. HARRIS: Is there a question?

2 MR. AJLOUNY: Yes. So my question is
3 with keeping in mind the City's concerns that were
4 brought up earlier in Ms. Dent's cross-
5 examination, when do you think the process will
6 start to start going to the City and say we want
7 this permit?

8 Are you saying that happened -- that
9 already has happened, it's in the process now?

10 MR. RICHARDSON: We've certainly started
11 those discussions, and we need to conclude those
12 discussions to get through the permitting process.

13 MR. AJLOUNY: Okay. Has that 18 months
14 to two years clock started yet?

15 MR. RICHARDSON: I was responding to the
16 question -- no, it hasn't.

17 MR. AJLOUNY: Okay. When do you expect
18 that clock to start?

19 PRESIDING MEMBER LAURIE: That question
20 has been asked and answered. The question was
21 after you get your permit how long does it take.
22 And the answer was 18 to 24 months.

23 MR. AJLOUNY: Is that --

24 PRESIDING MEMBER LAURIE: Asked and
25 answered.

1 MR. AJLOUNY: Well, I guess I
2 interpreted that answer differently. Do you agree
3 with Mr. Laurie's --

4 MR. RICHARDSON: Yes.

5 MR. AJLOUNY: Okay. So, boy, I guess
6 I'm losing it here, because I thought you meant
7 from the beginning of the process of permits, and
8 of the construction, was 18 months. Correct?

9 There is some reason for this question.
10 I'm not trying to --

11 HEARING OFFICER VALKOSKY: Okay, yes,
12 Issa, what are you trying to establish --

13 MR. AJLOUNY: I'm trying to establish
14 the length it would take to build this power plant
15 in a whole, so in my own mind, because I'm
16 concerned about the --

17 HEARING OFFICER VALKOSKY: Okay.

18 MR. AJLOUNY: -- power generation in
19 California, we need --

20 HEARING OFFICER VALKOSKY: Okay, fine,
21 that's sweet. We don't need your testimony, no
22 offense.

23 MR. AJLOUNY: Well, you asked me a
24 question and I was trying to answer, Stan, I'm
25 sorry.

1 HEARING OFFICER VALKOSKY: Okay, the
2 question is assuming certification of the project
3 by the Energy Commission, how long after that
4 certification will it take you to build the
5 project?

6 MR. RICHARDSON: The pipeline portion,
7 18 to 24 months.

8 HEARING OFFICER VALKOSKY: Yes, 18 to 24
9 months. Okay, there you go.

10 MR. AJLOUNY: Okay. You also mentioned
11 in the testimony earlier that Coyote Valley
12 Research Park was going to have in their design
13 the use of recycled water? Did I interpret that
14 correctly??

15 MR. RICHARDSON: What I stated regarding
16 Coyote Valley Research Park was that the
17 requirements from the City of San Jose were stated
18 that they would install pipelines for recycled
19 water that would be used at some future date.

20 MR. AJLOUNY: Okay. Do you have any
21 idea what they'd use it for? I don't expect you
22 do, but in case you do, --

23 MR. RICHARDSON: For recycled water.

24 MR. AJLOUNY: Yeah, what would they use
25 the recycled water for?

1 MR. RICHARDSON: Oh, I'm sorry. Yeah,
2 potentially for irrigation; for cooling water if
3 those uses were there; for potentially, could use
4 it for toilet flushing and that kind of process
5 use.

6 MR. AJLOUNY: Are you aware of the high
7 water table in the area and the concerns of the
8 Water District with irrigation?

9 MR. RICHARDSON: Yes.

10 MR. AJLOUNY: And --

11 PRESIDING MEMBER LAURIE: Let me
12 interrupt. We're going to have to break for
13 dinner. People have their vehicles over at the
14 public lot, and you have to get over there, and --

15 MR. AJLOUNY: Okay, I'll continue later,
16 I guess.

17 PRESIDING MEMBER LAURIE: Well, how much
18 more do you have?

19 MR. AJLOUNY: Not very much, I was just
20 going to follow up with that recycling water
21 issue. But I thought if we could break now then
22 it'll give me some time to think.

23 PRESIDING MEMBER LAURIE: Well, do you
24 have new questions that have not already been
25 covered?

1 MR. AJLOUNY: Well, I don't think that
2 one has been covered. The water table being high
3 and the concerns of the City using recycled water
4 with irrigation.

5 PRESIDING MEMBER LAURIE: Okay, reserve
6 your questions, and we'll reconvene at 7:35. And
7 we will be finishing water tonight, folks, so be
8 prepared to stay late.

9 (Whereupon, at 6:35 p.m., the hearing
10 was adjourned, to reconvene at 7:35
11 p.m., this same evening.)

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1 EVENING SESSION

2 7:50 p.m.

3 PRESIDING MEMBER LAURIE: Mr. Ajlouny,
4 please pick up where you left off.

5 MR. AJLOUNY: Okay, I decided to just
6 refrain from the one question that I was going to
7 ask, and I'll ask a different witness.

8 I have one last question, a short
9 question --

10 PRESIDING MEMBER LAURIE: Yes, sir

11 CROSS-EXAMINATION - Resumed

12 BY MR. AJLOUNY:

13 Q It is what do you see the entitlement/
14 permit process taking for the pipeline, just that
15 piece of it? How many months? And that was the
16 recycling pipe.

17 MR. RICHARDSON: We would estimate that
18 process to take on the order of a couple of
19 months.

20 MR. AJLOUNY: A few months?

21 MR. RICHARDSON: Several. Several
22 months.

23 MR. AJLOUNY: Could you quantify that
24 just a little bit more for me?

25 MR. RICHARDSON: Well, it's an estimate

1 based upon our experience in obtaining
2 entitlements and permits on other pipeline
3 projects, but it would be expected to be in the
4 range of two to four months.

5 MR. AJLOUNY: All right, thank you.

6 HEARING OFFICER VALKOSKY: Thank you.

7 Mr. Williams.

8 MR. WILLIAMS: Yes, sir. First, just a
9 general request. If at all possible I would
10 request that the Siting Committee make available
11 the transcript of the evidentiary hearings as
12 quickly as they're available.

13 For example, I understand from talking
14 to the recorder that he has submitted his
15 transcript, and it would be a convenience to us if
16 we could be seeing it in the next few days.

17 So, to the extent you can accelerate
18 that process, we would appreciate it.

19 HEARING OFFICER VALKOSKY: Okay.

20 MR. WILLIAMS: Thank you.

21 HEARING OFFICER VALKOSKY: Questions?

22 CROSS-EXAMINATION

23 BY MR. WILLIAMS:

24 Q First question, I regret that I have
25 probably about an hour of questions because of the

1 significance of this matter to the override
2 question. I will go as fast as I can. If the
3 applicant will stipulate, I'm sure it can go
4 faster than that.

5 My first questions relate to the 120
6 million gallon per day discharge limit. Mr.
7 Richardson, in your opinion are there other ways
8 for the City to get the benefit of recycle water
9 disposal?

10 Let me give you a hypothetical. Could
11 they run a pipeline to Hayward, or to Milpitas?

12 MR. RICHARDSON: Yes.

13 MR. WILLIAMS: Thank you. Could they
14 run a pipeline up to Sunnyvale, to Palo Alto or to
15 Santa Clara?

16 MR. RICHARDSON: To achieve what
17 benefit?

18 MR. WILLIAMS: To distribute the
19 recycled water other than by discharging it in the
20 Bay?

21 MR. RICHARDSON: Yes.

22 MR. WILLIAMS: So you would agree then
23 there are other ways of disposing of the recycled
24 water besides building a power plant?

25 MR. RICHARDSON: Yes.

1 MR. WILLIAMS: Good. What is your
2 understanding of the duty of the recycle water
3 company to the power plant? Can they turn off the
4 water anytime they want? For example, if there's
5 a drought?

6 MR. RICHARDSON: My understanding of the
7 arrangements between the retailers and their
8 recycle water customers is that they agree to
9 provide recycled water on demand by the customer.
10 And they, I don't believe it's a contract, it's a
11 user application process that the user goes
12 through.

13 And they do make provisions for 72 hour
14 outages.

15 MR. WILLIAMS: I see, thank you. Did
16 you or any of the people on the panel attend any
17 of the workshops at the Grange related to water or
18 water resources?

19 MR. RICHARDSON: Yes.

20 MR. WILLIAMS: Could I just see a show
21 of hands who was there?

22 Great.

23 Do you recall the discussion of whether
24 there could or should be a condition of compliance
25 related to sharing of water allocations in the

1 event of a drought?

2 MR. RICHARDSON: No.

3 MR. WILLIAMS: Does anyone at the table
4 remember that discussion?

5 MR. RICHARDSON: Ms. Pezzetti? No.

6 MR. WILLIAMS: Thank you. Do you have
7 an opinion as to when the next drought -- you may
8 recall they were one-year and five-year drought
9 cycles that were discussed in the workshop?

10 MR. RICHARDSON: I don't recall that
11 discussion.

12 MR. WILLIAMS: I see.

13 MR. RICHARDSON: In what context were
14 the drought cycles discussed?

15 MR. WILLIAMS: It was mentioned, if I
16 recall correctly, 1977/78 was a drought condition
17 in this area; 1986/87/88 were a drought. And in
18 fact, I believe we can establish Mr. -- there is
19 even a standard five-year drought period that, if
20 my memory serves, went from '88 to '93, is that
21 correct, approximately?

22 MR. RICHARDSON: To answer your first
23 question I do recall discussing drought issues as
24 it relates to the groundwater modeling.

25 MR. WILLIAMS: Yes. Do you have an

1 opinion or does anyone at the table have an
2 opinion what the decrease in recycled water
3 availability would be under drought conditions?

4 MR. RICHARDSON: Yes.

5 MR. WILLIAMS: Approximately what would
6 that be do you think?

7 MR. RICHARDSON: My opinion is that the
8 recycled water availability from South Bay Water
9 Recycling, given the way it's currently operated,
10 there would be no decrease in the amount of water
11 available. They have very large volumes of water
12 available every day.

13 MR. WILLIAMS: Yes. I've heard that
14 alleged. Do you believe there would be some
15 reduction in the use of recycled water for
16 landscapes, gardens, material such as that,
17 irrigation?

18 MR. RICHARDSON: What's the question?
19 Would there be reductions?

20 MR. WILLIAMS: In the event of a
21 drought?

22 MR. RICHARDSON: No.

23 MR. WILLIAMS: Okay. I don't quite know
24 how to get the question on the table. So let me
25 just pursue the next element of it.

1 Do you or does anyone on this panel have
2 an estimate of the approximate cost of the
3 recycled water?

4 MR. RICHARDSON: I do.

5 MR. WILLIAMS: Approximately what would
6 that be, sir?

7 MR. RICHARDSON: They have a range of
8 costs, depending upon the retailer. And I can
9 refer that to Mr. Helm to give you a more precise
10 answer.

11 MR. WILLIAMS: Thank you.

12 MR. HELM: I'm confused by your question
13 when you say cost.

14 MR. WILLIAMS: What would the price to
15 Calpine/Bechtel be per year for the recycled water
16 approximately?

17 MR. HELM: We have not negotiated the
18 full extent of those numbers, but our estimate is
19 based on a current dollar value, that's in current
20 dollars, not escalated, of \$296 an acrefoot.

21 MR. WILLIAMS: So what would that annual
22 cost be? Well, at 300 times, what, 1450? How
23 many acrefeet per year?

24 MR. RICHARDSON: Approximately a million
25 dollars a year.

1 MR. WILLIAMS: Thank you. Is it
2 possible that the use of recycled water would cost
3 more than the use of dry cooling towers or a zero
4 discharge system?

5 MR. HELM: Yes.

6 MR. WILLIAMS: I think so, too. Would
7 you care to estimate just approximately what the
8 price of recycled water would have to be before it
9 would make the wet/dry tower more expensive than
10 the dry cooling?

11 MR. HELM: I'm not sure I can answer
12 that question.

13 MR. WILLIAMS: Okay. Your company did
14 the study of the cost of installing the recycled
15 water pipeline, is that correct?

16 MR. RICHARDSON: That's correct.

17 MR. WILLIAMS: And for the three
18 different options approximately what was the cost
19 of the recycled water pipeline?

20 MR. RICHARDSON: The most recent current
21 estimate of the preferred route was about \$20
22 million.

23 MR. WILLIAMS: Okay. My recollection is
24 the February 2000 submittal showed prices in the
25 range of 25 to 28 million. Is that incorrect?

1 MR. RICHARDSON: Well, that's not my
2 recollection, but the most recent estimate for the
3 20-inch diameter pipeline, which is what the
4 facility would require, is approximately \$20
5 million.

6 MR. WILLIAMS: I see. So what would be
7 the approximate cost of the 24 or 28 if you were
8 meeting other needs of the community, as well as
9 MEC, with the pipeline?

10 MR. RICHARDSON: Proportionately a
11 little bit higher than \$20 million.

12 MR. WILLIAMS: Yeah, I guess that's
13 where I recall the 24 or 28. Do you expect the
14 recycled water company to build the cost of the
15 pipeline into the service? Or do you expect to
16 build and construct the pipeline, yourself?

17 MR. RICHARDSON: That's a subject of
18 negotiations that have not been completed.

19 MR. WILLIAMS: So is it your testimony
20 that you do not have the contract for recycled
21 water at this point because of the lack of
22 negotiations, or because of the City Council vote?

23 MR. RICHARDSON: It's my testimony that
24 there is not anticipated to be a contract that's
25 not how the City -- that's not how South Bay Water

1 Recycling operates through its retailers with its
2 customers. But there is no contract in place.

3 MR. WILLIAMS: Do any of the people at
4 the table have familiarity with the Sutter
5 project? Have any of you worked on the Sutter
6 project?

7 MR. RICHARDSON: The answer to the first
8 question is some general familiarity. The answer
9 to the second question is no.

10 MR. WILLIAMS: Okay. Well, let me ask,
11 because I'll be asking the staff witness in just a
12 few moments, do you agree with the general
13 estimate that a dry cooling tower costs \$10 or \$20
14 million more than the wet cooling tower? I can
15 refer you to the page in the FSA if that would
16 help. I believe it's in appendix B.

17 MR. RICHARDSON: I'm familiar with the
18 FSA. And I have read, reviewed the FSA and their
19 estimates of potential cooling tower costs.

20 MR. WILLIAMS: Do you generally agree
21 with that estimate?

22 MR. RICHARDSON: My opinion is that you
23 would have to look at the specific conditions for
24 this specific power plant. What I read in the FSA
25 appeared to me to be an estimate based upon prior

1 experience, not necessarily what it would cost at
2 Metcalf.

3 MR. WILLIAMS: I see. This is a
4 hypothetical question now. Because of the way
5 that the price of power has fluctuated, one way
6 for a city water company to share in that windfall
7 profits would be to have the price of the water
8 fluctuate in proportion to the power.

9 Do you agree, hypothetically? That's
10 the basis for my question now.

11 MR. HELM: Are you asking whether the
12 supplier could vary the price to an individual
13 customer, or to all customers on that basis?

14 MR. WILLIAMS: Well, I'll be happy to
15 take it both ways. To an individual customer?

16 MR. HELM: Most likely not.

17 MR. WILLIAMS: To a class of customers,
18 for example, power plants?

19 MR. HELM: The pricing generally would
20 have to be related to the cost of providing the
21 service.

22 MR. WILLIAMS: And that is because they
23 are a regulated utility? Or why do you state
24 that, sir?

25 MR. HELM: Yeah, state law for either a

1 regulated public utility or for a public agency,
2 such as municipality, would generally require that
3 rates reflect the cost of providing service.

4 MR. WILLIAMS: Okay, I generally agree
5 with that answer. The place I'm headed with this,
6 if the cost of the wet cooling were more expensive
7 than the cost of the dry cooling because of the
8 combination of the cost of the water provided and
9 the delay to operating the plant, could the use of
10 wet cooling be ordered, or would we feel that you
11 are electing a more expensive alternative, and
12 thus not -- you could not be provided water --

13 MR. HARRIS: Can I interrupt and ask you
14 to start over with a question?

15 MR. WILLIAMS: Yeah.

16 MR. HARRIS: You lost me, I'm sorry.

17 MR. WILLIAMS: Yes. If the wet cooling
18 with the recycled water pipeline were more
19 expensive than another alternative, would that
20 disqualify it for use under an override order by
21 the CEC?

22 Can we order public necessity
23 convenience for a more expensive alternative?

24 MR. HARRIS: I'm going to object on the
25 basis that it seeks a legal --

1 HEARING OFFICER VALKOSKY: Sustained.

2 MR. WILLIAMS: I agree, thank you.

3 (Laughter.)

4 MR. WILLIAMS: Okay, I'm not precisely
5 sure where it said it, but I believe it's in the
6 summary of the FSA, but my question to you, Mr.
7 Richardson, do you believe the FSA is adequate as
8 an EIS or EIR for the recycled water pipeline?

9 MR. RICHARDSON: What I --

10 MR. HARRIS: I think that also asks for
11 a legal conclusion.

12 HEARING OFFICER VALKOSKY: Sustained.

13 MR. WILLIAMS: Okay, I'll have to go
14 back to the elements of that and can someone find
15 me the reference or is that -- have you or any of
16 your staff at the table participated in public
17 hearings on the recycled water pipeline?

18 MR. RICHARDSON: Which public hearings
19 on which recycle water pipeline?

20 MR. WILLIAMS: For the Metcalf project.
21 My question is really has there been any public
22 hearings on the routing or location of the recycle
23 water pipeline?

24 MR. HARRIS: I'm going to ask you to
25 clarify. Are you talking about outside the CEC

1 process, or as part of the CEC process?

2 MR. WILLIAMS: I'm suggesting outside
3 the CEC process.

4 MR. RICHARDSON: Okay, the question was
5 have -- go ahead, what was the question?

6 MR. WILLIAMS: Can you read that
7 question back, or do I have to repeat it? Have to
8 repeat it.

9 (Laughter.)

10 MR. WILLIAMS: That's all right, I can
11 do it. Have you or any of the staff, excuse me,
12 the panel participated in public hearings on the
13 recycle water pipeline outside the CEC process?

14 MR. RICHARDSON: No, not outside the CEC
15 process.

16 MR. WILLIAMS: Are you aware of any such
17 hearings?

18 MR. RICHARDSON: On which --

19 MR. WILLIAMS: On the routing and
20 approval of the recycle water pipeline?

21 MR. RICHARDSON: No, not formally.

22 MR. WILLIAMS: I see. What do you mean
23 by not formally?

24 MR. RICHARDSON: I'm aware of the
25 process that the City is conducting with regard to

1 its planning of recycled water. I'm not aware of
2 formal public hearings specifically on recycle
3 water pipeline and its routing.

4 MR. WILLIAMS: A bit of guidance, Mr.
5 Valkosky. Can I ask Mr. Harris or can I ask the
6 staff attorney or the Siting Panel here, do you
7 believe the FSA is adequate as an EIS for the
8 linear facilities?

9 HEARING OFFICER VALKOSKY: I cannot
10 render a judgment on that. We have not seen all
11 of the evidence of record, which would enable the
12 Committee to perform its analysis.

13 I can, however, indicate to you that
14 under the Warren Alquist Act the certification
15 being sought is for the power plant, itself, as
16 well as the appurtenant facilities.

17 It is my understanding that the recycle
18 water pipeline, the approximately 10-mile one that
19 we have been discussing, qualifies as an
20 appurtenant facility.

21 MR. WILLIAMS: Thank you, I appreciate
22 your volunteering that, or offering that to help
23 me.

24 So, I'm trying to ask questions now to
25 determine the adequacy of that hearing process

1 with respect to the linear facility. I'll save, I
2 think, additional questions for staff --

3 HEARING OFFICER VALKOSKY: Mr. Williams,
4 these are technical witnesses here.

5 MR. WILLIAMS: I understand.

6 HEARING OFFICER VALKOSKY: These
7 witnesses are to answer technical questions
8 concerning the water supply proposed for the
9 project. I believe that's their area of
10 expertise.

11 MR. WILLIAMS: Thank you. Mr. Richards,
12 is it Richardson or --

13 MR. RICHARDSON: Yes.

14 MR. WILLIAMS: I'm sorry. I believe it
15 was Mr. Abreu's testimony, but if I'm recalling
16 incorrectly, he indicated and intent to appeal the
17 zoning to the City at the end of the CEC hearing
18 process, is that correct?

19 MR. RICHARDSON: Mr. Abreu.

20 MR. ABREU: No.

21 MR. WILLIAMS: I see, so I am sorry that
22 we can't go back in the record and have that read.
23 Sorry I misunderstood.

24 Is it your testimony then that you
25 intend to let the rejection of the zoning stand?

1 I thought I heard someone say they intended to
2 appeal the lack of annexation and lack of zoning
3 change after the evidence from this process was
4 put in the record. You don't recall that?

5 MR. ABREU: No.

6 MR. WILLIAMS: I see. So what is your
7 opinion with respect to either appeal of the
8 rezoning or the annexation or the plant
9 development at --

10 PRESIDING MEMBER LAURIE: That's outside
11 the scope of these witnesses, Mr. Williams.

12 MR. WILLIAMS: I would -- that they
13 testified earlier on it, but, okay.

14 Let me shift to the sewer system. Mr.
15 Richardson, what is the point at which you intend
16 to connect to the San Jose City sewer system?

17 MR. RICHARDSON: What do you mean by
18 that?

19 MR. WILLIAMS: Well, my understanding is
20 that --

21 MR. RICHARDSON: Point? What do you
22 mean by point?

23 MR. WILLIAMS: The place at which a new
24 sewer line would connect to the existing sewage
25 system.

1 MR. RICHARDSON: The proposed sewer line
2 would connect to the sewer in Santa Teresa
3 Boulevard.

4 MR. WILLIAMS: And what cross-street?

5 MR. RICHARDSON: Right near where Fisher
6 Creek crosses under Santa Teresa, right in that
7 vicinity.

8 MR. WILLIAMS: Have studies been done as
9 to the adequacy of that sewer for the discharge
10 sewage water?

11 MR. RICHARDSON: Staff at Public Works
12 have indicated that they have done such analyses.

13 MR. WILLIAMS: And what was the
14 conclusion of that analysis?

15 MR. RICHARDSON: There was sufficient
16 capacity in that sewer line to handle the proposed
17 flows from the Metcalf Energy Center.

18 MR. WILLIAMS: And for clarity, that was
19 the 1.9, or 1.7 million gallons per day, depending
20 on the cycle?

21 MR. RICHARDSON: I don't recall what the
22 peak flow was that we had proposed at the time.
23 It was either 1.9, or we had adjusted down to 1.1.
24 Certainly adequate to handle the 1.1.

25 MR. WILLIAMS: Okay. Is it fair then,

1 in the rest of this hearing, to proceed on the
2 basis that we should be planning on the
3 concentrations of salts and other effluents in the
4 five-cycle operation of the cooling towers?

5 MR. RICHARDSON: That is our proposal.

6 MR. WILLIAMS: Are you or is anyone at
7 the table aware of a potential redesign of the
8 plant for a smaller footprint?

9 MR. RICHARDSON: I'm not.

10 MR. WILLIAMS: Okay.

11 MR. RICHARDSON: No.

12 MR. WILLIAMS: Then it is your testimony
13 that the if the plant is built it will be partly
14 in the City and partly in the County, is that
15 correct, if there is no annexation?

16 MR. RICHARDSON: That's my
17 understanding.

18 MR. WILLIAMS: Here in my notes it was
19 someone's testimony right after the discussion of
20 LAFCO, that South Bay Water Recycling has absolute
21 right to turn off the water. Was this reference
22 to recycle water or potable water, do you recall?

23 MR. RICHARDSON: I don't recall.

24 MR. WILLIAMS: Does anyone at the table
25 recall?

1 Thank you. You can see why I was an
2 engineer instead of an attorney.

3 Storm water and the issues related to
4 storm water. What is your understanding of the
5 size of the storm water impoundment that's being
6 provided at the plant?

7 MR. RICHARDSON: I believe we've
8 answered that question previously, 1.9 acrefeet
9 was the volume, and I don't know, we gave the
10 exact dimensions, are you interested --

11 MR. WILLIAMS: Well, I'm headed in the
12 direction, the overflow then goes to Coyote Creek,
13 and has there been provision for settling to
14 remove mud and silt? Is the storm water
15 impoundment big enough to eliminate the mud and
16 silt that will --

17 MR. HARRIS: Can I ask that one question
18 be asked at a time.

19 MR. WILLIAMS: Sure, please do.

20 MR. HARRIS: One question at a time,
21 please, Bob.

22 MR. WILLIAMS: Oh, I thought you wanted
23 to ask one question.

24 MR. HARRIS: No, I'm sorry. Thank you
25 for your courtesy.

1 (Laughter.)

2 MR. WILLIAMS: Is the storm water
3 impoundment sized to prevent the carryover of mud
4 to the creek?

5 MR. RICHARDSON: No.

6 MR. WILLIAMS: So there is a possibility
7 that mud would carry over to Coyote Creek during a
8 heavy storm period?

9 MR. RICHARDSON: Yes.

10 MR. WILLIAMS: Is that taken into
11 account in the Fish and Wildlife study?

12 MR. RICHARDSON: That's a question --

13 MR. HARRIS: Biology section.

14 MR. WILLIAMS: And it probably doesn't
15 matter anyway, okay.

16 Well, sure didn't take -- took quite
17 awhile, though.

18 Well, at this time I've asked you
19 questions, and I will pursue to see if other
20 parties here have any different answers to some of
21 these questions.

22 So, thank you very much, that's the end
23 of my cross-examination of this panel.

24 HEARING OFFICER VALKOSKY: Thank you,
25 Mr. Williams. Redirect, Mr. Harris?

1 MR. HARRIS: Yes, sir.

2 REDIRECT EXAMINATION

3 BY MR. HARRIS:

4 Q Just a few questions and actually I want
5 to direct the first couple to Mr. Abreu.

6 Mr. Abreu, there was a lot of discussion
7 earlier about water wholesalers and retailers, and
8 I think a lot of confusion about who those parties
9 are and what their roles are.

10 Could you take a moment and explain for
11 folks who the resalers and wholesalers of --
12 excuse me, wholesalers and retailers of water are,
13 please?

14 MR. ABREU: The wholesaler for recycled
15 water is South Bay Water Recycling. And the
16 wholesaler for potable water is the Santa Clara
17 Valley Water District.

18 We would not purchase from a wholesaler,
19 we would purchase from a retailer. And the
20 retailer for recycled water and the retailer for
21 potable water would be the same. And it would
22 either be the City muni, or Great Oaks.

23 MR. HARRIS: Okay, so at the wholesale
24 level for recycled water there's one wholesaler,
25 is that correct?

1 MR. ABREU: Yes.

2 MR. HARRIS: And that's South Bay Water
3 Recycling?

4 MR. ABREU: Yes.

5 MR. HARRIS: And at the wholesale level
6 for potable water, that entity is the Santa Clara
7 Valley Water District, is that correct?

8 MR. ABREU: Yes.

9 MR. HARRIS: Okay, that's the wholesale
10 level. At the retail level then you have two,
11 again two entities. And those entities are?

12 MR. ABREU: Muni, which is the City's
13 water purveyor, or Great Oaks Water.

14 MR. HARRIS: Okay, so regardless of who
15 you elect, or eventually end up with as a retailer
16 of water, the wholesale water supplier will be
17 unchanged, is that correct?

18 MR. ABREU: That's correct.

19 MR. HARRIS: So, under this scenario
20 Metcalf is not a water entity, but is in fact a
21 customer, is that correct?

22 MR. ABREU: That's correct. We're just
23 going to be a retail customer of one of those two
24 retailers.

25 MR. HARRIS: As a retail customer then,

1 the question is related to agreements for right-
2 of-way, condemnation power, access to private
3 property, those are all questions that would be
4 for your water retailer, and not for you, as a
5 water customer, is that correct?

6 MR. ABREU: That's correct. We'll just
7 take the water at our property line as it's
8 delivered by the retailer.

9 MR. HARRIS: Is there any other further
10 clarification on this point of retailers and
11 wholesalers you'd like to make?

12 MR. ABREU: There was some talk about us
13 owning the water pipeline. And that's not our
14 intent. The water pipelines would be owned by
15 either the wholesalers for wholesale delivery, or
16 by the retailers, but not by us.

17 MR. HARRIS: Okay, thank you. And now
18 in your testimony you're making some assumptions
19 about the City's cooperation with regard to
20 provision of two services, those being recycled
21 water and sewer service.

22 Can you tell us what's the basis for
23 your belief?

24 MR. ABREU: As I said earlier, the CEC,
25 if they were to go ahead and approve our project,

1 they would say that the project is needed for
2 public benefit, and so we would expect the City to
3 serve us, as the state has made a decision of
4 public benefit.

5 There's also a separate set of benefits
6 to the City serving us that come, as well. So it
7 would just be logical and reasonable for them to
8 serve us.

9 MR. HARRIS: So your belief is then
10 based upon the benefits of the project to the
11 City?

12 MR. ABREU: Partly.

13 MR. HARRIS: And what are some of those
14 benefits, again?

15 MR. ABREU: Well, the benefits of using
16 recycled, I think, were -- recycled water were
17 enumerated. Several tens of millions of dollars
18 in financial benefit to the City, freeing up
19 capacity to allow future hookups into their City
20 sewer system, and growth within the City.

21 Reducing their risk of hitting a flow
22 trigger and coming under regulatory scrutiny from
23 the Regional Water Quality Control Board, and so
24 forth.

25 MR. HARRIS: So those kind of things set

1 forth in the direct testimony. I guess the bigger
2 question here is, you know, what happens, in your
3 assumptions what happens if you're wrong about the
4 City's cooperation?

5 MR. ABREU: If, for some reason, the
6 City decides not to cooperate after the state has
7 decided the project is needed, we have a number of
8 options.

9 One would be a legal option; in other
10 words just to take legal action to compel the City
11 to provide those services.

12 Another option would be to do an
13 initiative within San Jose to get it from the
14 voters clearly that we should get these services.

15 The third option would be to modify the
16 plant to an air cooled condenser, zero discharge
17 type of design. That would reduce the benefits of
18 the project, and I don't think is the best way to
19 go, either for us or from an overall societal
20 point of view. But that would be an option we'd
21 have to consider at that time.

22 MR. HARRIS: Thank you. A couple other
23 minor points came up in the direct testimony, as
24 well. There was a lot of discussion about various
25 permits and agreements.

1 Am I correct in that no one on the panel
2 was offering a legal opinion as to whether a
3 particular permit is required, or a particular
4 agreement?

5 MR. ABREU: That's right.

6 MR. HARRIS: So, I guess the reason I
7 wanted to be clear that there's no legal opinions
8 offered regarding which permits would be subsumed
9 by the Energy Commission's permit, is that
10 correct, license?

11 MR. ABREU: Yes.

12 MR. HARRIS: Thank you. In terms of,
13 again, your rebuttal testimony. There's some
14 discussion about the urban services area, the USA
15 designation.

16 Is it your contention that that
17 designation is just simply one basis for the
18 provision of services?

19 MR. ABREU: Again, that's a legal issue,
20 but my understanding from our lawyers that one of
21 the bases for legal action --

22 MR. WILLIAMS: Objection. The panel
23 wasn't giving legal opinions earlier.

24 MR. HARRIS: I'm trying to clarify the
25 USA question in his direct testimony.

1 HEARING OFFICER VALKOSKY: Let's
2 continue. That's clearly not a --

3 MR. HARRIS: And I'll leave this point
4 very quickly.

5 HEARING OFFICER VALKOSKY: This is
6 clearly not a legal opinion, it is the witness'
7 understanding of advice given by the attorney.

8 MR. HARRIS: Right, and this is the
9 point I want to make. That that discussion, a
10 single basis, not the basis, for the provision of
11 service?

12 MR. ABREU: That's correct, the legal
13 information we've got is that the urban service
14 area is one approach. There's also obligation to
15 serve issues and other legal bases that we can
16 pursue.

17 MR. HARRIS: Okay, we won't go into
18 those now. Thank you.

19 I'd like to, I guess, turn to -- I think
20 Mr. Richardson is probably the appropriate person.
21 And I want to talk about the so-called salinity
22 increase. There's been a lot of discussion.

23 And first I want to talk about those
24 numbers to refresh everybody's memory. What were
25 the -- I guess in terms of percentage,

1 concentrations, what was that number we talked
2 about for salinity increase?

3 MR. RICHARDSON: It was approximately 2
4 percent increase, a 3 percent maximum increase in
5 salinity of the water with the Metcalf project in
6 place.

7 MR. HARRIS: And, again, in terms of the
8 percentage of salt added by the Metcalf, I believe
9 the number you said was 95 percent of that is in
10 the source water?

11 MR. RICHARDSON: Correct.

12 MR. HARRIS: Turning now to the City's
13 EIR for the South Bay Water Recycling program,
14 does that EIR contemplate increased salinity
15 levels?

16 MR. RICHARDSON: It contemplates
17 salinity levels higher than the City currently
18 has. In fact, --

19 MR. HARRIS: Can you take a few minutes
20 and explain that, please?

21 MR. RICHARDSON: Yes. The EIR that was
22 the basis for the environmental documentation for
23 South Bay Water Recycling, evaluated the range of
24 salinity that the system had in place at the time
25 of between 800 and 900 mg/liter of salt, as

1 measured by total dissolved solids.

2 And the evaluation was that the water
3 could be irrigated within the service area in a
4 safe and appropriate environmentally appropriate
5 manner, and that there would be a market for the
6 product.

7 MR. HARRIS: In fact, isn't that one
8 sign of success of the program, that if they're
9 successful in marketing water they're going to
10 have more water use consumptively?

11 MR. RICHARDSON: Yes.

12 MR. HARRIS: So that kind of salinity
13 increase is actually a contemplated and an
14 expected result of the City program as set forth
15 in the City EIR?

16 MR. RICHARDSON: Yes.

17 MR. HARRIS: And the increases we're
18 talking about with the Metcalf facility are well
19 within the range of the contemplated numbers in
20 the City EIR, is that correct?

21 MR. RICHARDSON: Yeah, in fact they're
22 at the bottom end of the range.

23 MR. HARRIS: At the bottom end of that
24 range?

25 MR. RICHARDSON: Yes.

1 MR. HARRIS: Thank you. I think that's
2 it, thank you.

3 HEARING OFFICER VALKOSKY: Thank you,
4 Mr. Harris. Ms. Willis, recross?

5 MS. WILLIS: Thank you, just a couple
6 questions.

7 RE CROSS-EXAMINATION

8 BY MS. WILLIS:

9 Q Mr. Abreu, you just testified that the
10 Metcalf Energy Center would be a retail customer
11 for the reclaimed water. Would the applicant be
12 responsible for the construction and financing of
13 the recycle water pipeline?

14 MR. ABREU: We could. We may not.

15 MS. WILLIS: When would you know that
16 answer? I mean I'm just talking about timeframe,
17 as far as the project goes, not as far as dates.

18 MR. ABREU: You know, that's something
19 you would work out with the water retailer at the
20 time. You know, we'd apply for service. And then
21 we would, with them, determine, you know, the cost
22 of service and the conditions of service.

23 MS. WILLIS: Then is it possible that
24 someone else other than -- some other entity, such
25 as the City of San Jose, or Great Oaks, would be

1 building the pipeline?

2 MR. ABREU: Yes.

3 MS. WILLIS: So can you clarify for me
4 then is this recycled pipeline part of the
5 proposed project, as proposed in the AFC?

6 MR. ABREU: Yes, it is part of the
7 project.

8 MS. WILLIS: So, it's part of the
9 project, but you're testifying today that you're
10 not -- that the applicant may or may not be
11 responsible for the construction and/or financing
12 of the pipeline?

13 MR. HARRIS: Can I ask for
14 clarification. Ms. Willis, are you asking about
15 the project's definition? Or are you asking about
16 how various components of the project will be paid
17 for? Because I think those are different things.

18 MS. WILLIS: Actually, I think we're
19 kind of back to the project description just to
20 make -- we're trying to clarify whether the
21 pipeline is part of the project description. Mr.
22 Abreu's testimony stated they would just be,
23 basically the project would just be getting water
24 as a retail customer at your property boundary.
25 And it was unclear, and just from your recent

1 answer, how, when, where, or whom or what entity
2 might be constructing that pipeline.

3 I'm just trying to get some
4 clarification.

5 MR. ABREU: You know, it could go a
6 number of different ways, Kerry. The City, in one
7 letter, told us that they would like us to
8 construct and build the pipeline, and then give it
9 back to the City. So that's one option.

10 The City, itself, builds recycle
11 pipelines, you know, all the time, and so that's
12 another option.

13 Great Oaks could build the pipeline. We
14 could do it in some joint venture approach.

15 We just need to have a pipeline built
16 and through our project we've described it that
17 way, so we have the flexibility to be the ones to
18 build it.

19 MS. WILLIS: No further questions, thank
20 you.

21 HEARING OFFICER VALKOSKY: Ms. Dent.

22 MS. DENT: Just a couple questions.

23 RECROSS-EXAMINATION

24 BY MS. DENT:

25 Q I just want to follow up on the same

1 line of questions about the water retailer/
2 wholesaler relationship.

3 So, you've indicated that Metcalf Energy
4 Center would only be a retail customer of either
5 the municipal water system or Great Oaks Water
6 Company. But, again, Great Oaks Water Company
7 doesn't have any sort of arrangement whatsoever
8 with the City to retail recycled water, is that
9 correct?

10 MR. ABREU: I believe that's correct.

11 MS. DENT: So Metcalf Energy Center, in
12 order to use Great Oaks Water Company as its water
13 supplier for 95 percent of the water for the
14 project is just going to have to wait and see if
15 Great Oaks Water Company and South Bay Water
16 Recycling can come up with an agreement on how
17 this water recycling pipeline gets built?

18 MR. ELLISON: Can I ask for a
19 clarification. Does your question assume recycled
20 water?

21 MS. DENT: Their project assumes
22 recycled water. I'll ask that question first.
23 Your project proposes the use of recycled water
24 for the cooling towers, does it not?

25 MR. ABREU: Yes.

1 MS. DENT: So, Great Oaks Water Company
2 doesn't have a contract or any ability to access
3 the recycled water produced by South Bay Water
4 Recycling at the present time, does it?

5 MR. ABREU: Not at this time as far as I
6 know.

7 MS. DENT: And you don't know what the
8 timeframe is, if there is any timeframe, for the
9 City and Great Oaks Water Company to make such an
10 arrangement?

11 MR. ABREU: I don't know.

12 MS. DENT: You'd just be waiting for
13 that to happen, as the customer?

14 MR. ABREU: If we get approval from the
15 CEC we'll be more than just waiting, we'll be
16 pursuing both Great Oaks and the City to get it
17 resolved.

18 MS. DENT: So, let's follow up on that a
19 bit. Muni water is the City's water system, and
20 we've talked a bit about the requirements for the
21 City to serve recycled -- to serve potable or
22 recycled water directly to Metcalf Energy Center.

23 Do you have any information though, or
24 knowledge about the arrangements that the City and
25 Great Oaks would need to make?

1 MR. ABREU: I would know that Great Oaks
2 would have to work out an arrangement with South
3 Bay Water Recycling to be a retailer of recycled
4 water.

5 MS. DENT: And you'd do whatever you
6 could to facilitate that, but you would not be a
7 party to that transaction, would you?

8 MR. ABREU: We could be a party.

9 MS. DENT: So now you're not going to be
10 a customer anymore, you're going to come into a
11 relationship between the retailer and the
12 wholesaler?

13 MR. ABREU: Being a customer is being a
14 party.

15 MS. DENT: But I thought you said
16 there -- I thought I heard Mr. Richardson say that
17 as a customer you really wouldn't have any
18 contractual arrangement with your retailer.

19 MR. RICHARDSON: My point was that the
20 current arrangement that the retailers have with
21 their customers, I believe, is not a contractual
22 basis.

23 MS. DENT: Thank you. That's all of my
24 questions.

25 HEARING OFFICER VALKOSKY: Thank you,

1 Ms. Dent. Ms. Cord.

2 MS. CORD: Nothing further.

3 HEARING OFFICER VALKOSKY: Thank you.

4 Mr. Scholz.

5 MR. SCHOLZ: I'll let Mr. Ajlouny ask my
6 question.

7 HEARING OFFICER VALKOSKY: Thank you,
8 Mr. Scholz. Mr. Ajlouny.

9 MR. AJLOUNY: Yes.

10 RECROSS-EXAMINATION

11 BY MR. AJLOUNY:

12 Q I'd like to go over the three options
13 that I think I just heard, so just to confirm
14 them. If the City doesn't comply with the water
15 needs or the entitlements or permits, whatever the
16 correct words are, I think I heard there's a
17 lawsuit to make the City do it, maybe convert to
18 dry cooling, or an initiative, is that correct?

19 MR. ABREU: Yes.

20 MR. AJLOUNY: Okay. As far as the
21 lawsuit, would you expect that process to take --
22 do you have any idea, because in your position
23 have you been through this before? Do you have
24 any idea, one month, two months, one year, two
25 years?

1 MR. HARRIS: I'm going to object to that
2 question on the basis it's speculative and asks
3 for a legal conclusion.

4 MR. AJLOUNY: Would it be unreasonable
5 to think that six months for a lawsuit is --

6 HEARING OFFICER VALKOSKY: I think we're
7 in a situation, let's ask it this way: Mr. Abreu,
8 is it, in your opinion, likely that any
9 hypothetical lawsuit could delay construction of
10 the project, assuming CEC certification?

11 MR. ABREU: It could.

12 HEARING OFFICER VALKOSKY: Thank you.

13 MR. AJLOUNY: Thank you, Mr. Valkosky.
14 In the area of dry cooling, if that was chosen,
15 would you have to go through a change in your AFC,
16 like another supplement, and go through this
17 process, or a miniature process of that change, in
18 your expertise in this whole process?

19 MR. ABREU: We would have to amend it.

20 MR. AJLOUNY: Okay, amend it, thank you.
21 I always have a tough time with words.

22 In that amendment, in your experience,
23 how long would that process be?

24 MR. ABREU: We did something similar in
25 Sutter, and it didn't take, you know, like a

1 couple months, something like that.

2 MR. AJLOUNY: Two months. Okay, and to
3 the initiative, have you ever had experience with
4 doing an initiative before?

5 MR. ABREU: Not personally.

6 MR. AJLOUNY: Anyone on the panel? I
7 see a head shaking yes.

8 SPEAKER: That's because I was holding
9 it sideways --

10 (Laughter.)

11 MR. AJLOUNY: No, I think -- I don't
12 know this lady's name, but --

13 MR. RICHARDSON: Apparently Ms. Pezzetti
14 has. Go ahead.

15 MS. PEZZETTI: Yes, I have.

16 MR. AJLOUNY: Okay, in your estimate --

17 MR. HARRIS: Can I ask for a
18 clarification. What kind of initiative were you
19 involved in? Or I guess what's the question
20 relate to in terms of an initiative? She said
21 yes, she'd been involved in an initiative.
22 Generally, you know, like Prop --

23 MR. AJLOUNY: Well, that was --

24 MR. HARRIS: -- or what are we talking
25 about?

1 MR. AJLOUNY: Well, that's what was my
2 question was what kind of initiative.

3 MS. PEZZETTI: Well, then maybe before I
4 say yes, why don't you re-ask me what kind of
5 initiative.

6 MR. AJLOUNY: Okay. I asked if -- okay,
7 what kind of initiative were you involved with?

8 MS. PEZZETTI: I was involved in an
9 initiative where they were trying to -- a
10 developer was trying to get a project, and he put
11 it before the voters.

12 MR. AJLOUNY: I'm sorry, the last part I
13 didn't get. If you could speak into the mike.

14 MS. PEZZETTI: The developer put before
15 the voters the attempt to get a project approved.

16 MR. AJLOUNY: Okay, was it a similar
17 power plant project?

18 MS. PEZZETTI: No.

19 MR. AJLOUNY: Okay. Was it with the
20 city or was it with county?

21 MR. HARRIS: I'm going to object to this
22 as being irrelevant now.

23 MR. AJLOUNY: No, what I'm trying to do
24 is set for my brief at the end a time element,
25 because of the concern of time, of the need of

1 power, so that's all I'm trying to do.

2 MR. HARRIS: You're free to speculate,
3 but the witness doesn't have an answer for you.

4 MR. AJLOUNY: I'm not speculating, I'm
5 trying to --

6 HEARING OFFICER VALKOSKY: Why don't we
7 just -- the witness did testify she had experience
8 with an initiative. Mr. Ajlouny, why don't you
9 just ask the --

10 MR. AJLOUNY: Okay, how long --

11 HEARING OFFICER VALKOSKY: -- question
12 you want to ask.

13 MR. AJLOUNY: How long was that process?

14 MS. PEZZETTI: I was not involved
15 directly with the getting of the initiative on the
16 ballot. I worked on the water supply for the
17 project.

18 MR. AJLOUNY: Have you researched the
19 initiative at all with the County or the City?

20 MR. HARRIS: The witness just testified
21 that she didn't have any personal experience in
22 that area. I'd object --

23 MR. AJLOUNY: No, I asked Ken.

24 HEARING OFFICER VALKOSKY: This is a
25 question to the panel, I believe, is that not

1 correct, Mr. Ajlouny?

2 MR. AJLOUNY: Yes, that's correct.

3 MR. HARRIS: What's the question again?

4 MR. AJLOUNY: Have you researched with
5 the County or the City the process and the time
6 elements of an initiative?

7 MR. ABREU: Done some preliminary.

8 MR. AJLOUNY: And did you come up with
9 an estimated time of what it would take to go
10 through that process?

11 MR. ABREU: Just a rough range.

12 MR. AJLOUNY: Which is approximately?

13 MR. ABREU: My recollection was, you
14 know, like six to nine months.

15 MR. AJLOUNY: And in that preliminary
16 study that you did on that initiative, did you
17 come to a conclusion whether it would be
18 Countywide or Citywide in this instance?

19 MR. ABREU: Don't know.

20 MR. AJLOUNY: Have you given that any
21 consideration, considering that part of the land
22 is in the County?

23 MR. ABREU: Yes.

24 MR. AJLOUNY: And you don't have any
25 feelings of which way you have to go in the

1 initiative, County versus City?

2 MR. ABREU: We've made no final
3 determinations.

4 MR. AJLOUNY: Then one last question is
5 who would respond to emergency if part of this
6 land was on County? Would it be a County or City,
7 do you know?

8 Oh, you know what, I apologize. I
9 brain-checked. This is for my hazmat. Sorry.

10 That's the end of my questioning.

11 HEARING OFFICER VALKOSKY: Thank you,
12 Mr. Ajlouny. Mr. Williams.

13 MR. WILLIAMS: Thank you, sir. Again,
14 this is cross on the subjects raised by Mr.
15 Harris. First this water wholesaler/retailer
16 issue.

17 RECROSS-EXAMINATION

18 BY MR. WILLIAMS:

19 Q Is it your testimony, Mr. Abreu, that
20 one possibility is to be a retail customer taking
21 water at the property line?

22 MR. ABREU: Yes.

23 MR. WILLIAMS: In that instance then the
24 linear facility would not be part of the AFC, is
25 that correct?

1 MR. ABREU: No.

2 MR. WILLIAMS: Why is that? It seems
3 like the City or the builder of the pipeline would
4 be responsible for the linear facility.

5 MR. ABREU: Just a moment.

6 (Pause.)

7 MR. ABREU: Could you ask it again, Bob?

8 MR. WILLIAMS: In the event that you're
9 a retail customer taking water at the plant
10 boundary -- I'm trying to explore why you answered
11 no, because that seemed illogical and not
12 following from your previous testimony.

13 So, I was trying to explore why the
14 answer to my previous question was no, if you're
15 taking water from the vendor at the property line,
16 doesn't that vendor then have responsibility for
17 the linear facility?

18 MR. HARRIS: I'm going to ask for
19 clarification on what you mean by responsibility
20 for the linear facility. Are you talking about
21 the infrastructure or the commodity, the pipeline
22 or the water?

23 MR. WILLIAMS: I'm talking about both
24 the pipeline and the water and the licensing and
25 approvals and construction necessary to bring that

1 water to the boundary, the boundary of your
2 property line.

3 Seems to me that this testimony -- well,
4 forgive me. You're trying to have it both ways,
5 and I'm trying to pin down which way.

6 MR. ABREU: Well, you know, the retailer
7 could build the pipeline, drill the well, and
8 bring that up to our property line. They could do
9 that. And actually they frequently do that.

10 MR. WILLIAMS: In that instance is the
11 retailer responsibility extend the approvals and
12 licenses for that pipeline?

13 MR. ABREU: You know, I'm not that
14 familiar with the details of the permitting of a
15 retailer versus, you know, what you're talking
16 about.

17 MR. RICHARDSON: I'll respond to -- our
18 understanding, from the standpoint of the AFC
19 process, and the definition of the project, is
20 that the pipelines, the wells for these
21 facilities, recycled water and potable water, are
22 part of the project.

23 But for the power plant there would not
24 necessarily be those facilities designed and
25 constructed.

1 Therefore, we analyzed the project
2 including the linear facilities that were
3 specifically designed to serve the project. And
4 did our environmental analysis -- from an
5 environmental perspective did our analysis and the
6 project description for those facilities.

7 So that's -- whoever the retailer of
8 water and recycled water is, our analysis has been
9 on a project including the recycled water pipeline
10 and the water pipelines and the wells.

11 MR. WILLIAMS: Taking that question as
12 your current position, do you then have
13 responsibility for the EIR, for the approvals and
14 permitting for the pipeline?

15 MR. RICHARDSON: The answer to the
16 question do we have responsibility for the CEQA
17 documentation of this project, the AFC process,
18 this process we're engaged in now is a CEQA
19 process, yes.

20 MR. WILLIAMS: I'm asking specifically
21 for the pipeline. The answer is?

22 MR. RICHARDSON: Yes, we've covered the
23 pipeline as part of the project from an
24 environmental documentation perspective.

25 MR. WILLIAMS: So if we allege there are

1 inadequacies in the permitting of the pipeline
2 they would be your responsibility then?

3 MR. HARRIS: I don't know if it was
4 argumentative or if I didn't understand it. So,
5 could you restate it, please.

6 MR. WILLIAMS: Are you responsibility
7 for the permitting of the pipeline?

8 MR. RICHARDSON: The questions that I've
9 been responding to have been related to the
10 environmental documentation. I would distinguish
11 that from the permitting because permitting is a
12 broad term.

13 MR. WILLIAMS: Forgive me, I do
14 understand that. Let me broaden the question.
15 Both the environmental documentation and the
16 permitting of the pipeline.

17 MR. RICHARDSON: Relative to the
18 environmental documentation, this process we are
19 engaged in now is an environmental documentation
20 process specifically for the power plant and the
21 linear facilities, including the recycled water
22 pipeline, water pipelines and wells.

23 MR. WILLIAMS: But it does not include
24 permits that would be given then by the City? It
25 just relates to the environmental reports?

1 MR. RICHARDSON: Permits would still
2 need to be obtained for linear facilities.

3 MR. WILLIAMS: If I could move to
4 another area.

5 MR. HARRIS: I want to clarify he's not
6 providing --

7 MR. WILLIAMS: Excuse me, Mr. --

8 MR. HARRIS: -- a legal opinion on that.
9 You're not providing a legal opinion on the
10 permitting --

11 MR. RICHARDSON: No, no.

12 MR. WILLIAMS: Do I get to interrupt Mr.
13 Harris, then, when I disagree with him? Yes,
14 thank you.

15 MR. ELLISON: Perhaps a point of
16 clarification might help here. There's a
17 distinction between permits for the construction
18 of a pipeline, and in some cases I think people
19 have been using the word permits in a different
20 sense, meaning permits for the use of water from
21 the pipeline.

22 And I think one of the points of
23 confusion here is that distinction.

24 This project includes those linear
25 facilities. If the Energy Commission grants a

1 permit for this project, it will include those
2 linear facilities, the construction of them.

3 Now, the water is a separate question.

4 MR. WILLIAMS: Am I free on cross here
5 then to explore the permit that's required for the
6 water? What is the approval that's required for
7 the water, as distinct from the linear facility?
8 Is it Mr. Ellison who's making that distinction?

9 HEARING OFFICER VALKOSKY: Mr. Williams,
10 please confine your cross-examination to the
11 witnesses, to the material they testified to
12 within the scope of their redirect examination.

13 MR. WILLIAMS: Thank you, sir.

14 Let me move to the salinity increase.
15 Mr. Richardson, you testified it was approximately
16 a 3 percent increase, is that correct?

17 MR. RICHARDSON: Yes.

18 MR. WILLIAMS: What is your
19 understanding of the environmental or technical
20 concern that's related to salinity or total
21 dissolved solids in recycled water? What is the
22 effect?

23 MR. RICHARDSON: That was a long
24 question.

25 MR. WILLIAMS: What is the effect? Why

1 are we concerned about salinity in the recycled
2 water?

3 MR. RICHARDSON: Who's we?

4 MR. WILLIAMS: Do you know why there is
5 a concern about the amount of salinity in recycled
6 water?

7 MR. RICHARDSON: Yes.

8 MR. WILLIAMS: Or does anyone on the
9 panel?

10 MR. RICHARDSON: Yes.

11 MR. WILLIAMS: What is that, please?

12 MR. RICHARDSON: The concern about
13 salinity in recycled water has to do with its
14 potential environmental effects, and those have
15 been analyzed and we have found them to be
16 insignificant, and --

17 MR. WILLIAMS: Does one of the
18 environmental effects include reducing the
19 permeability of the ground floor infiltration and
20 percolation of groundwater?

21 MR. RICHARDSON: That is one of the
22 effects of concern, and it was an effect we
23 analyzed, yes.

24 MR. WILLIAMS: Is that a cumulative
25 effect?

1 DR. DICKEY: No, --

2 MR. RICHARDSON: Okay, I will ask Dr.
3 Dickey to assist me.

4 HEARING OFFICER VALKOSKY: Dr. Dickey,
5 speak into a microphone, please.

6 MR. RICHARDSON: Repeat your question
7 and then I'll see if it's one that I'm referring
8 over to Dr. Dickey.

9 MR. WILLIAMS: Fair enough. Is it
10 possible for a salinity to decrease the
11 permeability of the ground?

12 DR. DICKEY: Are you referring to high
13 salinity or low salinity?

14 MR. WILLIAMS: Or the cumulative effect
15 of salinity is what I'm referring to.

16 DR. DICKEY: Are you speaking of an
17 increase in salinity or a decrease in salinity? I
18 need clarification, I'm sorry, before I can answer
19 the question.

20 MR. WILLIAMS: I'm talking specifically
21 about salinity in the range of 800 --

22 DR. DICKEY: Unless you change it, it's
23 not going to have any effect. So you have to
24 specify an increase or decrease --

25 (Parties speaking simultaneously.)

1 MR. WILLIAMS: Well, excuse me, --

2 DR. DICKEY: -- for me to answer your
3 question.

4 MR. WILLIAMS: -- a 3 percent increase,
5 will that change -- will you elaborate on what the
6 effects of that --

7 DR. DICKEY: Yes, it could increase
8 permeability of the ground, theoretically.

9 MR. WILLIAMS: Increase or decrease?

10 DR. DICKEY: Increase.

11 MR. RICHARDSON: Yeah, that's been our
12 testimony.

13 HEARING OFFICER VALKOSKY: How much
14 more, Mr. Williams, it's getting late.

15 MR. WILLIAMS: I believe I've exhausted
16 all the areas that were opened by Mr. Harris.
17 Thank you.

18 HEARING OFFICER VALKOSKY: Okay, thank
19 you. Mr. Harris, does that conclude your
20 presentation?

21 MR. HARRIS: My witnesses are going to
22 quickly run to the door, so, yes, thank you.

23 HEARING OFFICER VALKOSKY: The
24 Committee's thanks to the panel.

25 MR. WILLIAMS: Thanks for your patience.

1 (Applause.)

2 HEARING OFFICER VALKOSKY: Let the
3 record reflect the resounding applause.

4 (Laughter.)

5 HEARING OFFICER VALKOSKY: Let's go off
6 the record temporarily.

7 (Off the record.)

8 PRESIDING MEMBER LAURIE: You are
9 certainly not obligated to do so. We certainly
10 appreciate your patience and your attendance.

11 Let the record reflect that we have no
12 voluntary commentaries at this time. Thank you.

13 MS. WILLIS: At this time staff calls
14 Lorraine White and Joe O'Hagan, and both witnesses
15 will need to be sworn in, please.

16 Whereupon,

17 LORRAINE WHITE and JOE O'HAGAN
18 were called as witnesses herein, and after first
19 having been duly sworn, were examined and
20 testified as follows:

21 MS. WILLIS: Thank you.

22 DIRECT EXAMINATION

23 BY MS. WILLIS:

24 Q Ms. White, could you please state your
25 name for the record.

1 MS. WHITE: My name is Mary Lorraine
2 White.

3 MS. WILLIS: Was a statement of your
4 qualifications attached to your testimony?

5 MS. WHITE: Yes, it was.

6 MS. WILLIS: And could you state what
7 your job title is.

8 MS. WHITE: I am a Planner III
9 Environmental Planner with the California Energy
10 Commission.

11 MS. WILLIS: And very very briefly,
12 could you please state your education and
13 experience as it pertains to soil and water
14 resources.

15 MS. WHITE: I have a degree from the
16 University of California at Davis in biochemistry.
17 And I have been working at the California Energy
18 Commission for nearly ten years. Three years plus
19 in the Siting and Regulatory Program. And I have
20 provided testimony on the area of soil and water
21 resources in six cases.

22 MS. WILLIS: Did you prepare or assist
23 in preparing the testimony entitled, soil and
24 water resources in the final staff assessment?

25 MS. WHITE: Yes, I did.

1 MS. WILLIS: And for the record, we've
2 marked that as exhibit 7.

3 Do the opinions contained in your
4 testimony represent your best professional
5 judgment?

6 MS. WHITE: Based on the information at
7 the time the testimony was developed, yes.

8 MS. WILLIS: Mr. O'Hagan, could you
9 please state your name for the record.

10 MR. O'HAGAN: My name is Joe O'Hagan,
11 O-'-H-a-g-a-n.

12 MS. WILLIS: Was a statement of your
13 qualifications attached to this testimony?

14 MR. O'HAGAN: Yes, it was.

15 MS. WILLIS: And could you briefly state
16 your education and experience as it pertains to
17 soil and water resources.

18 MR. O'HAGAN: I have a masters science
19 in soils. I've been employed by the California
20 Energy Commission for close to 20 years. And I've
21 been working on soil and water related issues for
22 close to ten years, now, dealing with siting
23 cases.

24 MS. WILLIS: Do the opinions contained
25 in the testimony represent your best professional

1 judgment at the time it was written?

2 MR. O'HAGAN: Yes, it does.

3 MS. WILLIS: Ms. White, I'm going to ask
4 you some questions. First, I believe that we had
5 a change in soil condition 5 that we have provided
6 copies for all parties, is that correct?

7 MS. WHITE: Yes, it's more of an
8 editorial correction, to have the verification
9 read as the condition.

10 Specifying the duration prior to the
11 commencement of commercial operation that a
12 particular action would be taken.

13 MS. WILLIS: And, Mr. Valkosky, I
14 believe that one change was submitted, at least
15 it's docketed as part of a packet. I don't think
16 any of us here have the packet as it was docketed.
17 Shall we mark it separately?

18 HEARING OFFICER VALKOSKY: No, I think
19 it's sufficiently minor change, and if it's just
20 read into the record, so there's no confusion, and
21 we all know what we're talking about.

22 MS. WILLIS: Thank you.

23 MS. WHITE: Would you like me to read it
24 into the record?

25 MS. WILLIS: Please.

1 HEARING OFFICER VALKOSKY: I would.

2 MS. WHITE: Okay. The change sought on
3 soil and water-5, in the verification strike out
4 "two weeks" and insert "no later than 60 days
5 prior to the start of construction" -- pardon me,
6 "start of commercial operation."

7 MS. WILLIS: Thank you. Ms. White, what
8 was the purpose of your testimony?

9 MS. WHITE: The purpose of the testimony
10 was to present staff's assessment based on the
11 information available at the time on the potential
12 for the Metcalf Energy Center to affect soil and
13 water resources, particularly the potential to
14 induce erosion and sedimentation, adversely affect
15 surface and groundwater resource, or degrade
16 surface and groundwater quality.

17 It was also intended to evaluate the
18 project's, as proposed, ability to comply with
19 laws, ordinances, regulations and standards. And
20 to the extent that any impacts are identified or
21 noncompliance issues revealed, to recommend
22 mitigation through the form of conditions of
23 certification to address those.

24 MS. WILLIS: What were your assumptions?

25 MS. WHITE: There were many, so -- the

1 primary assumptions that we made were based on the
2 proposal in the AFC. Those included that the
3 project would be subject to a PD rezoning, and be
4 annexed into the City of San Jose.

5 That the South Bay Water Recycling
6 pipeline was a part of the project, thus the
7 responsibility of the applicant to construct.
8 That potable water would be supplied through two
9 new wells from groundwater in the Coyote Valley
10 basin. And that potable water would be used only
11 to cool -- for cooling purposes at the plant under
12 interruption conditions of the recycled water that
13 would be supplied by the South Bay Water Recycling
14 pipeline.

15 That there were two possible purveyors,
16 neither of which had actually been chosen as the
17 purveyor for the project. That ultimately
18 whatever purveyor is chosen supplies all of the
19 water requirements of the project.

20 There were several lesser assumptions
21 that were included in the groundwater and NOx
22 deposition analyses, and those are explained in
23 the studies that were done.

24 That whatever emergency fire water
25 requirements were necessary to meet the City of

1 San Jose requirements would be supplied by the
2 purveyor of the water resources chosen.

3 That ultimately if the project was
4 annexed into the City of San Jose, that most of
5 the permits and agreements would be mostly
6 ministerial in nature.

7 MS. WILLIS: Thank you. In the final
8 staff assessment did you conclude that there were
9 any significant adverse environmental impacts from
10 the water supply or soils? You can address both.

11 MS. WHITE: We had identified that there
12 was the potential for the extraction of
13 groundwater to possibly result in cumulative
14 impacts. But those impacts could be addressed
15 through the District's integrated resource plan
16 remedies that were laid out, such as the increase
17 of local recharge into the Coyote Valley basin,
18 thus mitigating any potential impact. The
19 applicant -- it wasn't going to require that the
20 applicant do anything different.

21 There was a question as to whether or
22 not there is an impact to the recycled water
23 product from the South Bay Water Recycling
24 program, and the use by MEC of the recycled water,
25 and thus the discharge into that system.

1 We couldn't make a finding that there
2 was a significant impact under CEQA, but we did
3 determine that what impact the use of the water
4 and discharge to the system by MEC would not have
5 an insignificant or negligible impact to the
6 marketability.

7 But those impacts, whatever they may be,
8 could be addressed through the industrial waste
9 discharger's permit. And that whatever mitigation
10 the City decides is appropriate, whether it be
11 instituting a fee for a centralized desalinization
12 unit, or having pretreatment on site of the users,
13 would be addressed in that permit.

14 MS. WILLIS: Have you proposed a
15 condition of certification to require the use of
16 reclaimed water for cooling purposes?

17 MS. WHITE: Yes. That condition is
18 contained in soil and water-1.

19 MS. WILLIS: Did staff analyze the use
20 of groundwater for use by MEC for cooling
21 purposes?

22 MS. WHITE: Only in terms of backup
23 water supply, and that would be limited to a 30-
24 day continuous duration, and no more than a 45-day
25 period annually.

1 MS. WILLIS: Did staff analyze the use
2 of alternative cooling methods including dry
3 cooling for cooling purposes?

4 MS. WHITE: We addressed it in terms of
5 the ability to lessen any adverse impacts that may
6 be caused by the project on the recycled water
7 product. And specifically we identified dry
8 cooling or zero discharge as a possible way of
9 lessening any potential increase in the salinity
10 of the South Bay Water Recycling product.

11 MS. WILLIS: Since the FSA was issued,
12 have there been any changes that have affected
13 your assumptions?

14 MS. WHITE: Yes, actually there was a
15 vote by the City Council to deny the PD zoning
16 application. There has been no action on the
17 annexation. Those were part of the AFC proposal
18 and part of what we had based our analyses on.

19 MS. WILLIS: And why was this --

20 MS. WHITE: There was --

21 MS. WILLIS: I'm sorry.

22 MS. WHITE: And there was also a
23 testimony submitted by the City recently, this
24 month, that explained what that denial means in
25 terms of obtaining the proper approvals and

1 agreements for water service.

2 It essentially nullified any document
3 that we had received which we could have
4 considered a will-serve letter through the City of
5 San Jose to supply water resources to the project,
6 or to accept waste.

7 MS. WILLIS: So is it your testimony
8 that you've reviewed the City of San Jose's
9 prepared comments/testimony as presented by Mr.
10 Shipes?

11 MS. WHITE: Yes.

12 MS. WILLIS: Based on his comments, and
13 in your opinion, does the applicant have a valid
14 water agreement with any water purveyor for
15 reclaimed water?

16 MS. WHITE: No.

17 MS. WILLIS: How about for potable
18 water?

19 MS. WHITE: The only agreement we
20 consider valid at this point for potable water is
21 that which the applicant received from Great Oaks.

22 MS. WILLIS: Does the applicant have a
23 valid industrial waste discharge agreement?

24 MS. WHITE: No.

25 MS. WILLIS: In light of Mr. Shipes'

1 testimony, the written testimony as presented, is
2 it your opinion that the applicant will be able to
3 obtain these agreements?

4 MS. WHITE: At this point it's staff's
5 opinion that the ability for the applicant to
6 obtain those agreements is highly uncertain, and
7 that there is no commitment at this time from an
8 authorized purveyor of recycled water to serve
9 this project.

10 MS. WILLIS: Also in light of the City's
11 actions and Mr. Shipes' testimony, does staff have
12 any concerns that might necessitate any changes in
13 staff's testimony? And this might be in regards
14 to other LORS.

15 MS. WHITE: Staff does have concerns
16 because of the uncertainty that the City's actions
17 on the PD zoning, and thus the testimony has
18 resulted in, although the applicant has proposed
19 either Great Oaks or the City of San Jose as the
20 source of their water resources, staff is aware of
21 only one authorized purveyor of recycled water,
22 which is the fundamental proposal the applicant
23 has put forth for cooling purposes. And that
24 would be San Jose muni.

25 And without a commitment either in the

1 form of an interconnection agreement, or some
2 other type of commitment on behalf of the City, we
3 don't necessarily think that they have the supply
4 to send the project.

5 MS. WILLIS: Did staff evaluate County
6 LORS for this project?

7 MS. WHITE: Our review of County LORS
8 were very limited. The only purveyor of recycled
9 water in the area is through San Jose muni. And
10 so the source of the water would still be the City
11 for the recycled water product.

12 Great Oaks is authorized to supply water
13 in certain areas of the County, and within the
14 City of San Jose for potable water supplies.

15 There are some County LORS that apply to
16 the storage and the handling of hazardous
17 materials. We looked at that briefly in terms of
18 water quality protection.

19 There are some, perhaps some other
20 requirements, but we were mostly focused on the
21 project being in the City, and City requirements
22 applying.

23 MS. WILLIS: In light of the City's
24 actions, and Mr. Shipes' testimony, is staff
25 suggesting that the Committee consider any changes

1 in staff's proposed conditions of certification?

2 And you might want to turn to page 545 and 546.

3 MS. WHITE: The conditions of
4 certification, as they are written now, do not
5 provide any assurance that there would be a
6 committed water supply.

7 MS. WILLIS: And which condition are you
8 referring to?

9 MS. WHITE: In terms of the conditions
10 that specifically address supply and/or waste
11 treatment.

12 MS. WILLIS: Why don't we just go for
13 supply first.

14 MS. WHITE: Okay. For supply, in terms
15 of the soil and water-1 and soil and water-8,
16 those deal with supply.

17 The soil and water-1 only deals with the
18 fact that the project would have to use tertiary
19 treated water. It doesn't address the need for
20 the project to actually bring forth something like
21 an interconnection agreement or anything like
22 that, because of the uncertain nature of the
23 actual source of the water, who the purveyor would
24 be, and whether or not the City will actually
25 agree.

1 Staff is recommending that there's a
2 couple ways to approach it. We could seek to have
3 an interconnection agreement submitted, a copy of
4 that submitted to the Commission prior to
5 certification.

6 Certainly no less than prior to any
7 construction beginning. And that would provide
8 certainty in terms of the potential water supply
9 for recycled and potable water.

10 And so that would help to alleviate our
11 concerns about the uncertainty of any supply that
12 could be provided to this project, if approved by
13 the Commission.

14 MS. WILLIS: And did you want to move on
15 to soil and water-6?

16 MS. WHITE: Sure. The other concern
17 that we have is that there's no agreement with the
18 City of San Jose to provide wastewater treatment.
19 There is the concern about the impact of salinity.

20 And right now the condition only
21 addresses obtaining the industrial discharge
22 permit, which would have been, if the project was
23 within the City, more of a ministerial action.

24 Now that it is possibly going to be part
25 in the City and part in the County, additional

1 agreements will be -- and approvals will be
2 required, based on Mr. Shipes' testimony.

3 And so we would recommend an addition
4 that has interconnection agreements for waste
5 discharge being obtained, either prior to a
6 Commission decision on the case, or certainly no
7 less than prior to any construction activities
8 being conducted on the site.

9 MS. WILLIS: Are there any other changes
10 that you would propose?

11 MS. WHITE: No.

12 MS. WILLIS: And is there anything else
13 you'd like to add to your testimony?

14 MS. WHITE: Not at this time.

15 MS. WILLIS: Okay, thank you. That
16 concludes our testimony. We'd like to move into
17 the record the section entitled, soil and water
18 resources, as part of exhibit 7.

19 HEARING OFFICER VALKOSKY: Okay, Ms.
20 Willis, could you specify the pages that that
21 appears in exhibit 7? Or, let me put it this way,
22 is it correct that the pages that you're moving in
23 are pages --

24 MS. WILLIS: 509 --

25 HEARING OFFICER VALKOSKY: -- 509

1 through --

2 MS. WILLIS: 572.

3 HEARING OFFICER VALKOSKY: -- 572, yeah,
4 that's what I have, too.

5 MS. WILLIS: Yes, sir.

6 HEARING OFFICER VALKOSKY: Is there
7 objection? Hearing none, that portion of exhibit
8 7 is received into evidence.

9 MS. WILLIS: And these witnesses are now
10 available for cross-examination.

11 HEARING OFFICER VALKOSKY: Thank you.
12 Before we begin, again just a couple of clarifying
13 questions.

14 EXAMINATION

15 BY HEARING OFFICER VALKOSKY:

16 Q Did you have any specific language for
17 the proposed changes to conditions of
18 certification 1 and 6?

19 MS. WHITE: Yes, if you'll give me just
20 a moment.

21 HEARING OFFICER VALKOSKY: Okay.

22 MS. WILLIS: Ms. White, I don't want to
23 interrupt, but for clarification purposes I think
24 our position was at this time we didn't have
25 specific language, but we would be willing to, if

1 directed by the Committee, to develop language.

2 MS. WHITE: Right. The only thing that
3 I wanted to present at this time is the idea that
4 there are certain permits, and the way that the
5 conditions are currently written in both 1 and 6,
6 those permits could come prior to operation.

7 What we're actually after is the
8 interconnection agreements which should actually
9 be obtained prior to beginning any kind of
10 construction on the linears.

11 Those would logically be obtained well
12 in advance of actually obtaining those permits.
13 So, our recommendation is that those types of
14 agreements be obtained and copies of those
15 agreements submitted to the Committee, or to the
16 Commission.

17 And there's two options here. One
18 before certification, and certainly our position
19 would be that they be submitted no later than some
20 time prior to the start of construction.

21 HEARING OFFICER VALKOSKY: Okay, so now
22 I understand your position that you do not have
23 any specific language. You're just dealing with
24 concepts, is that correct?

25 MS. WHITE: The language would certainly

1 be dealing with the --

2 HEARING OFFICER VALKOSKY: Right, and
3 when you -- okay. Before certification is easy
4 enough to understand.

5 The second possibility that you pose is
6 prior to beginning of construction. Now, I need
7 to know your definition of construction.
8 Specifically, for example, in soil and water-4 you
9 talk about prior to beginning any clearing,
10 grading or excavation activities.

11 Is that the sort of construction you
12 mean? Or do you mean prior to -- or do you mean
13 something else?

14 MS. WHITE: It would be along the lines
15 of what's in soil and water-2 where we're talking
16 about any project element, either at the site or
17 any linear facility.

18 HEARING OFFICER VALKOSKY: Okay, but the
19 operative phrase would be prior to beginning any
20 clearing, grading or excavation?

21 MS. WHITE: Correct.

22 HEARING OFFICER VALKOSKY: Okay, thank
23 you.

24 MR. ELLISON: Mr. Valkosky, if I may I'd
25 like to ask a couple questions and make a comment.

1 HEARING OFFICER VALKOSKY: Okay, Mr.
2 Ellison, you'll get your chance for cross-
3 examination. I've just got a couple clarifying
4 things that I want before I turn it over to you.
5 Is that okay?

6 MR. ELLISON: These are not in the
7 nature of cross-examination. We have that, as
8 well. This is more in the nature of the propriety
9 of staff changing their testimony at this point in
10 time in such a significant way.

11 MS. WILLIS: If I may answer?

12 HEARING OFFICER VALKOSKY: I don't know
13 what you're answering yet, we haven't heard Mr.
14 Ellison's comments.

15 MR. ELLISON: I simply want to note for
16 the record a concern, and I'll be brief.

17 This is a significant change
18 potentially, particularly depending upon which
19 option staff is endorsing here.

20 Our witnesses have not only presented
21 their testimony and their rebuttal testimony
22 without an opportunity to present this. They have
23 appeared and been excused. It's very difficult
24 for the applicant to respond to this kind of thing
25 in real time, particularly without the language

1 even being before us now.

2 What we're being asked to do is to
3 respond to a very significant change in the
4 staff's position with essentially no notice, and
5 after our witnesses have testified and left the
6 stand.

7 And I want to register an objection to
8 that in the strongest possibly terms. Thank you.

9 HEARING OFFICER VALKOSKY: Okay, --

10 MR. WILLIAMS: Mr. Williams would like
11 to just note that because of the situation here,
12 that the applicant has totally ignored a major
13 action by the City of San Jose, that the action by
14 staff is totally appropriate.

15 HEARING OFFICER VALKOSKY: Mr. -- thank
16 you for that comment, Mr. Williams. I'd like
17 staff's response.

18 MS. WILLIS: Yes, and obviously we've
19 been very concerned about the, quote, "unfair
20 surprise issue." We received the City's formal
21 testimony docketed on January 10th, and we
22 received it on our office on January 11th, which I
23 believe was Thursday.

24 We had a meeting to discuss -- the
25 testimony did change positions on now what are we

1 going to do. We did not understand how we were
2 going to handle this issue.

3 I immediately called Mr. Harris' office
4 around 1:00 p.m. and was told he was at lunch and
5 would return, and I left a voicemail. I called
6 again at 4:00 that day, and he had left for the
7 day. And I received a message at 6:30 at night.

8 The next morning I received that
9 message, and he instructed me to call three
10 different people, but he did not ever return my
11 phone call.

12 I called Mr. Carrier and I talked to him
13 on Friday morning, and explained the situation.
14 And did not receive any further phone call or
15 contact until moments before this testimony.

16 We apologize for this, and like we said,
17 we did not prepare language precisely for the
18 reason that this is something that's new to us.
19 But the City has taken actions and we felt it was
20 important to address.

21 MR. ELLISON: The City took its action
22 in November.

23 MS. WILLIS: If I may --

24 HEARING OFFICER VALKOSKY: Okay, let's
25 not indulge in argument on that point. I think as

1 far as the Committee is concerned, the chief
2 question is unfair surprise. And, frankly,
3 applicant's chance to respond.

4 Right off the top of my head there are a
5 couple of options. One is to let the witnesses
6 continue testifying, subject to your right to
7 introduce surrebuttal, if you will, at some future
8 date.

9 Okay, we can accomplish that as quickly
10 as possible. I don't have a specific date for
11 that.

12 Number two would be to have the staff
13 witnesses continue testify. If you do not feel
14 prepared to cross-examine them, because of the
15 recent nature of the information, they will remain
16 subject to recall probably, I don't -- at the next
17 available date so that you could then perform
18 cross-examination.

19 Another option, although I certainly
20 don't think it's a preferable option, is that we
21 postpone this matter for another couple days.

22 Do you have a preference here?

23 MR. ELLISON: We certainly do. We agree
24 with you that postponing this is not a good idea.
25 We're certainly prepared to go forward.

1 I think the proposal that you made, Mr.
2 Valkosky, your first proposal is probably the
3 fairest way to deal with this. If we conclude
4 after our cross-examination that we need to put
5 additional testimony in the record, I would
6 reserve the right to do that.

7 If we conclude that these witnesses need
8 to be recalled for further cross-examination, I
9 would like to reserve the right to do that.

10 With that understanding we're prepared
11 to proceed.

12 HEARING OFFICER VALKOSKY: Okay. Does
13 anyone have any questions on that procedure?

14 All right, --

15 MR. SCHOLZ: Does that open it up on
16 this limited topic for everyone?

17 HEARING OFFICER VALKOSKY: This opens it
18 up on this limited topic the propriety of the
19 contents of the staff conditions. Yes, we're
20 dealing with just the staff conditions.

21 We don't know if there is a continued
22 element. Okay? That would then be fair game.
23 Okay?

24 MR. ELLISON: Mr. Valkosky, can I
25 clarify even further, as far as the applicant is

1 concerned, we're prepared to confine any further
2 hearings on this matter, if any are necessary.
3 And quite frankly, I'll have to talk to my client,
4 I have no idea.

5 HEARING OFFICER VALKOSKY: I understand
6 that.

7 MR. ELLISON: But, if any are necessary,
8 it's just the changes in the staff conditions --

9 HEARING OFFICER VALKOSKY: That would be
10 my --

11 MR. ELLISON: -- that were described
12 tonight?

13 HEARING OFFICER VALKOSKY: That would be
14 my understanding. Or such broader area as you may
15 feel compelled to request at the conclusion of
16 your cross-examination.

17 What it comes down to, Mr. Ellison, is
18 that you're essentially controlling the scope of
19 that, okay, in your request.

20 Thank you. Okay, and again, these are
21 just some clarifying questions for my
22 understanding.

23 On page 518 of the staff testimony there
24 is, I believe, okay, reference to Great Oaks and
25 the proceeding apparently currently before the

1 PUC.

2 I wonder if staff could update in the
3 sense of the current status of that proceeding?

4 MS. WHITE: I have no additional
5 information.

6 HEARING OFFICER VALKOSKY: Okay, thank
7 you. Again, a further point of clarification. On
8 page 526, the third paragraph under water supply,
9 dealing with onsite fire water storage.

10 And this is certainly one of my great
11 weaknesses, but in talking about 240,000 gallons
12 representing approximately a two-hour fire supply.
13 And the next sentence is normally the City
14 requires a 4500 gallon/minute for four-hour event
15 protection.

16 Are you with that --

17 MS. WHITE: I'm with you.

18 HEARING OFFICER VALKOSKY: -- section?

19 Okay. Basically what I would like to know is what
20 is your understanding of the fire water supply
21 that will be provided at the plant.

22 Are these the same thing in different
23 units, or --

24 MS. WHITE: No, you'll have an onsite
25 storage, and then the agreement with Great Oaks

1 was that they would be able to, if they were the
2 purveyor, accommodate the City of San Jose
3 requirement for a 4500 gallon/minute service. And
4 sustain it for a four-hour period.

5 HEARING OFFICER VALKOSKY: Okay, so is
6 it your understanding that that arrangement would
7 comply with the City's requirements for a fire
8 water supply?

9 MS. WHITE: Right.

10 HEARING OFFICER VALKOSKY: Thank you.
11 Next in the testimony you address compliance with
12 the Regional Water Resources Control Board policy
13 75-58, is that correct?

14 MS. WHITE: Yes, sir.

15 HEARING OFFICER VALKOSKY: Okay. Could
16 you tell me your conclusion as to the project's
17 conformity with that policy?

18 MS. WHITE: The project would conform to
19 75-58.

20 HEARING OFFICER VALKOSKY: And what is
21 the basis for your conclusion?

22 MS. WHITE: The fact that they're using
23 degraded water source, the recycled water product.
24 That it is an acceptable, it would qualify as a
25 wastewater being discharged to the ocean, which is

1 the primary preference there.

2 HEARING OFFICER VALKOSKY: Okay,
3 hypothetically if the project were not to use the
4 recycled water source, would it still be your
5 opinion that it would comply with 75-58?

6 MS. WHITE: At this time it's my opinion
7 that if they did not use recycled water their only
8 choice would be to use potable water, which is
9 clearly in conflict with this policy.

10 HEARING OFFICER VALKOSKY: Okay, thank
11 you.

12 MS. WHITE: I'd also like to point out
13 to the Committee in terms of compliance related to
14 recycled water, that where recycled water is
15 available, they have to comply with the use of
16 that recycled water for industrial purposes under
17 water code 13550.

18 HEARING OFFICER VALKOSKY: Okay, thank
19 you. Now, what is your opinion as to the meaning
20 of the key word availability?

21 MS. WHITE: I agree with the applicant's
22 view that this water is available, that there is
23 capacity of the recycled water system to serve the
24 project. And that getting the line built is the
25 operative point here.

1 HEARING OFFICER VALKOSKY: Would it, in
2 your opinion, be available if the purveyor refused
3 to provide it to them?

4 MS. WHITE: No.

5 HEARING OFFICER VALKOSKY: Thank you.
6 Finally, are you recommending the use of zero
7 discharge system for wastewater treatment on this
8 project?

9 MS. WHITE: I'm not necessarily
10 recommending the zero discharge. In fact, I had
11 made a recommendation in soil and water-6 that the
12 applicant obtain the industrial discharger's
13 permit, and comply with all of the treatment
14 requirements or conditions of that permit, rather
15 than institute a zero discharge system.

16 HEARING OFFICER VALKOSKY: Thank you.
17 Did you perform an analysis of the feasibility of
18 the use of dry cooling for this facility?

19 MS. WHITE: We had looked at dry cooling
20 as an option to address the salinity issue. We
21 didn't go into a full blown analysis on the
22 feasibility of dry cooling at this particular
23 site. We recognize there could be potential
24 constraints.

25 HEARING OFFICER VALKOSKY: Okay, do you

1 agree with applicant's earlier statement that the
2 use of dry cooling at the project would require
3 either additional analysis, or if it were
4 proposed, post certification amendment?

5 MS. WHITE: We agree.

6 HEARING OFFICER VALKOSKY: Thank you.

7 Mr. Ellison or, I'm sorry, Mr. Harris.

8 MR. HARRIS: Yes, I'm going to proceed.

9 Mr. Ellison will have some questions based upon
10 his review of Mr. Shipes' testimony. He's going
11 to be handling that issue, so there may be some
12 overlap here. We'll try to minimize that and keep
13 it close.

14 CROSS-EXAMINATION

15 BY MR. HARRIS:

16 Q I wanted to start, Ms. White, with a
17 couple of things. Going back to the question of
18 salinity, you talked about, you know, concern
19 about salinity. And I think the words that you
20 used were not a negligible impact, is that
21 correct?

22 MS. WHITE: Correct.

23 MR. HARRIS: Now, I want to draw your
24 attention to the CEQA terminology. Are you
25 familiar generally -- I know you are, I'm sorry,

1 but let me ask the question -- are you familiar
2 generally with the terms significant impacts and
3 not significant impacts, insignificant impacts
4 under CEQA?

5 MS. WHITE: Yes, I am.

6 MR. HARRIS: Using those CEQA
7 terminology is there a significant impact related
8 to the salinity?

9 MS. WHITE: No. We have stated such.

10 MR. HARRIS: Thank you. In terms of the
11 issues that you think have arisen related to
12 actions by the City, the City Council's November
13 28th action, you used the word uncertainty.

14 Can you provide a little context for
15 what you mean by uncertainty?

16 MS. WHITE: The City has provided
17 several documents stating that they have the
18 ability to service the project, and that service
19 would be subject to certain approvals. And prior
20 to that City action it was related to the PD
21 zoning and annexation action --

22 MR. HARRIS: Okay, I'm sorry, let me
23 focus my question. I'm sorry.

24 In terms of the ability of the City to
25 serve water, the physical system and the discharge

1 system, we'll do them one at a time, the recycled
2 water. In terms of the ability for the City to
3 serve water, has anything changed that would
4 affect your analysis?

5 MS. WILLIS: I'm going to ask you to
6 clarify. You're talking about the physical
7 ability, or I mean I think that her testimony --

8 MR. HARRIS: I'll clarify.

9 MS. WILLIS: -- was not that it was
10 uncertain that it physically could go through
11 pipelines, as to whether there would be the legal
12 and other processes in place.

13 MR. HARRIS: I wasn't clear on that
14 concept from her testimony. That's why I'd like
15 to explore it. And I will clarify.

16 From an engineering perspective, in
17 terms of system capacity, and water availability,
18 I keep mixing the issues, so let's go to water
19 availability.

20 In terms of water availability from an
21 engineering perspective, has anything changed
22 since you did your FSA that would affect the
23 availability of water?

24 MS. WHITE: There has always been the
25 statement that at this time the infrastructure is

1 not in place to serve North Coyote Valley. That,
2 in fact, that pipeline would need to be built to
3 extend to North Coyote --

4 MR. HARRIS: Has there been a change in
5 the need to extend that pipeline since the City
6 Council action? Again, I'm just talking about the
7 ability --

8 MS. WHITE: No.

9 MR. HARRIS: Okay, and you've agreed
10 earlier that the pipeline is part of the project,
11 is that correct? The project description of the
12 applicant.

13 MS. WHITE: I said that when I wrote the
14 testimony it was my understanding that it was part
15 of that. Based on what I've heard today from Mr.
16 Abreu and the team, there is a bit of uncertainty
17 in my mind --

18 MR. HARRIS: Okay, let me ask you the
19 question --

20 MS. WHITE: -- and this gets back to the
21 retail customer versus responsible party for the
22 development of that line.

23 MR. HARRIS: Okay, let me focus you on
24 the environmental issues associated with the
25 building of that pipeline.

1 Assume that that pipeline's going to be
2 built by pipeline construction company, XYZ
3 Construction Company. From an environmental
4 perspective, so long as that construction complies
5 with LORS and complies with the conditions of
6 certification, does it matter if XYZ Company is
7 the applicant? From an environmental perspective.

8 MS. WHITE: I can only speak to the
9 issues of soil and water.

10 MR. HARRIS: Okay, that's all --

11 MS. WHITE: There are many other --

12 MR. HARRIS: -- I'm asking you to speak
13 to.

14 MS. WHITE: -- consider that are --

15 MR. HARRIS: In terms of soil and water
16 issues, from an environmental perspective, does it
17 matter if that construction company is the
18 applicant?

19 MS. WHITE: No. As long as they comply
20 with the requirements laid down.

21 MR. HARRIS: Does it matter if XYZ
22 Company is hired by the applicant, so long as they
23 comply with the conditions and the LORS, from an
24 environmental perspective?

25 MS. WHITE: Yes.

1 MR. HARRIS: Does it matter?

2 MS. WHITE: No.

3 MR. HARRIS: Okay.

4 MS. WHITE: Sorry.

5 MR. HARRIS: That's all right my
6 yes/noes -- if XYZ Company is hired by the water
7 retailer, from an environmental perspective does
8 it matter?

9 MS. WHITE: No.

10 MR. HARRIS: And does it matter if the
11 XYZ Company is, in fact, the water retailer's
12 staff, from an environmental perspective?

13 MS. WHITE: If it's the same line.

14 MR. HARRIS: Same LORS, same conditions
15 applied with.

16 MS. WHITE: No.

17 MR. HARRIS: Because all I've changed in
18 these four scenarios is who do the construction
19 guys work for. So from an environmental
20 perspective those are all similar outcomes, is
21 that correct?

22 MS. WHITE: Right, as long as it's the
23 same line that's approved.

24 MR. HARRIS: I'll leave Mr. Shipes'
25 testimony to Mr. Ellison.

1 SPEAKER: I think counsel is trying to
2 get Lorraine's attention.

3 (Laughter.)

4 MR. HARRIS: We'll give you a semaphore
5 next time.

6 Water, I want to go down to water-1.

7 MS. WHITE: Sure.

8 MR. HARRIS: Water-1 you said is related
9 to the supply issue, and you talked about possibly
10 triggering that off an interconnection agreement,
11 either prior to certification, is that correct, or
12 prior to construction?

13 MS. WHITE: The way this condition was
14 written it was based on the assumption that the
15 project would be annexed into the City. Based on
16 the evidence that I presented in my testimony, the
17 only real purveyor of recycled water at this time
18 is the --

19 MR. HARRIS: Okay, let me ask you to
20 answer my question. The proposed language we're
21 talking about here, the triggers would be prior to
22 certification or prior to construction?

23 MS. WILLIS: Could you clarify? Are you
24 asking her the condition as written?

25 MR. HARRIS: No, the condition as she

1 discussed in her direct testimony, possibly
2 changing it. I know we don't have any specific
3 language before us, but I'm trying to explore the
4 scope of what she's considering.

5 MS. WHITE: This particular portion of
6 the condition should stay the same. You're still
7 going to need the recycled water use permit, and
8 that can be obtained at a later date.

9 But what we need to get to now is the
10 commitment or the surety that you actually have a
11 committed water supply. This is something we
12 normally see in other cases.

13 MR. HARRIS: So you're looking --

14 MS. WHITE: And the reason --

15 MR. HARRIS: -- evidence --

16 MS. WHITE: -- and what we're trying to
17 trigger it to is an agreement, the interconnection
18 agreement, which we have to obtain prior to
19 beginning that line anyway.

20 MR. HARRIS: So your requirement then is
21 more than just evidence of an ability to
22 interconnect, correct?

23 MS. WHITE: Correct.

24 MR. HARRIS: You're actually looking for
25 an actual interconnection agreement?

1 MS. WHITE: Agreement.

2 MR. HARRIS: Okay. And the trigger,
3 this is back to my original line, the triggers on
4 that would be prior to certification by the
5 Commission?

6 MS. WHITE: There are two options that
7 we're putting forth to the Committee to consider.
8 And the first is that because of the level of
9 uncertainty here, that the applicant be asked to
10 provide that surety prior to even certification.

11 Staff's position is that surety be
12 provided no later than some point prior to
13 beginning any elements construction, even the
14 facility site --

15 MR. HARRIS: Thank you.

16 MS. WHITE: -- we think that's only --

17 MR. HARRIS: Thank --

18 MS. WILLIS: Would you please let the
19 witness answer the questions?

20 MR. HARRIS: I would like the witness to
21 answer my questions.

22 MS. WILLIS: She's been in the middle of
23 a sentence several times --

24 PRESIDING MEMBER LAURIE: Ms. Willis,
25 that's fine. Mr. Harris.

1 MR. HARRIS: I guess I want to get to --
2 I think I understand the triggers you're talking
3 about now, and I want to get to the underlying
4 public interest that you believe you're protecting
5 by these proposed changes.

6 What is the underlying public interest
7 that you believe you're protecting by moving this
8 requirement forward in time, either to
9 precertification or preconstruction?

10 MS. WHITE: The issue I'm trying to
11 address has to do with whether or not the project
12 has a water supply, or an entity to handle their
13 waste discharge.

14 We, at this time, in my opinion, based
15 on the City's testimony we just received, and the
16 testimony that you and your team presented today,
17 there is not that surety.

18 MR. HARRIS: Again, let me ask the --

19 MS. WHITE: And it is --

20 MR. HARRIS: -- question again and see
21 if I can get you to answer my question. I was
22 interested in the public interest. I understand
23 the rationale behind what you --

24 MR. WILLIAMS: I object, sir. This has
25 been asked and answered --

1 MR. HARRIS: No, it hasn't.

2 PRESIDING MEMBER LAURIE: Overruled.

3 Mr. Harris, go ahead and ask your question.

4 MR. HARRIS: I understand the rationale
5 for what your changes are, but I'm directing you
6 to the public interest that you're concerned about
7 protecting with the proposed change.

8 And what is that public interest?

9 MR. O'HAGAN: I'll try to answer that,
10 Jeff, if it will help. The staff's concern here
11 is that if, as proposed, the project is not able
12 to receive the recycled water from the City, that
13 we would potentially have a \$400 million white
14 elephant sitting there.

15 If there is an alternative to providing
16 water or not needing water, such as wet/dry
17 cooling, we would rather have that taken care of
18 prior to Calpine disturbing an area and going
19 through a lot of construction that would end up
20 being unnecessary.

21 So there is, we feel, a public benefit
22 to insure that you do have the agreements and you
23 will get the water that you're proposing.

24 MR. HARRIS: Okay. Thank you, Joe.

25 Water-6 relates to salinity, I guess, as I

1 understand. And, again, jus for clarification for
2 my purposes, are you suggesting an interconnection
3 agreement for waste discharge precertification or
4 preconstruction?

5 MS. WHITE: The addition to this would
6 be that you demonstrate you actually have an
7 agreement with the City that they would accept
8 your waste. And the trigger that has been
9 identified is the interconnection agreement. You
10 would get that before you can start construction.
11 You will still need to have the industrial waste
12 discharger's permit, but that can be obtained
13 later.

14 MR. HARRIS: Okay, so --

15 MS. WHITE: And the options we've given
16 to the Committee is that if they think it is
17 appropriate that that be required prior to
18 certification, but it's staff's position that that
19 be obtained no later than some point prior to
20 initiating construction.

21 MR. HARRIS: Okay, again, an agreement
22 and not just evidence.

23 MS. WHITE: An agreement.

24 MR. HARRIS: Okay, thank you. At this
25 point I think I'd like to turn it over to Mr.

1 Ellison who has some questions based --

2 MR. ELLISON: Mr. O'Hagan, I want to
3 follow up on your response to Mr. Harris' question
4 about the public interest for just a moment.

5 As I understand staff's concern, as
6 expressed by you in that answer, it is that
7 without the conditions, the changes in the
8 conditions that staff is now proposing, that the
9 possibility exists that Calpine/Bechtel would
10 construct this project without a water supply, and
11 you would end up -- the public would end up with a
12 \$400 million white elephant, as you described it,
13 is that correct?

14 MR. O'HAGAN: Yes.

15 MR. ELLISON: You understand that this
16 is a merchant project, correct?

17 MR. O'HAGAN: Yes, I do.

18 MR. ELLISON: And you understand that
19 for a merchant project the opportunity for
20 Calpine/Bechtel to recover any of their investment
21 depends upon the operation of the project, do you
22 not?

23 MR. O'HAGAN: Yes.

24 MR. ELLISON: So you understand that if
25 Calpine/Bechtel were to proceed with construction

1 for a project for which it had no water and no
2 wastewater disposal, it would be proceeding to
3 spend \$400 million with no hope of getting back --

4 MS. WILLIS: I'm going to object. Mr.
5 O'Hagan is working for the Energy Commission, and
6 not for Calpine/Bechtel.

7 MR. ELLISON: To clarify, I'm asking his
8 understanding of the risk --

9 PRESIDING MEMBER LAURIE: The objection
10 is overruled. Sir, if you know an answer to that
11 question, answer it.

12 MR. O'HAGAN: Certainly Calpine would be
13 at risk financially for their investment.

14 MR. ELLISON: The project cannot be
15 operated without cooling water, correct?

16 MR. O'HAGAN: Correct.

17 MR. ELLISON: And it cannot be operated
18 without either an amendment of the certification
19 to zero discharge, or some form of wastewater
20 disposal, correct?

21 MR. O'HAGAN: Correct.

22 MR. ELLISON: So, absent an amendment
23 and assuming no change in the staff's original
24 conditions, the project could not be operated in a
25 white elephant configuration, correct?

1 MR. O'HAGAN: That's correct.

2 MR. ELLISON: I'm sorry, have you
3 finished your answer?

4 MR. O'HAGAN: Yes.

5 MR. ELLISON: Okay. So staff's concern
6 is that Calpine/Bechtel will build a project which
7 it knows it cannot operate, is that a fair summary
8 of the concern?

9 MR. O'HAGAN: I would assume that
10 Calpine would be optimistic that they could
11 operate the facility, and then efforts to get
12 approval from the City or Great Oaks to be able to
13 retail recycled water from the City would fail,
14 and suddenly you have a half-way constructed
15 facility, or even more that you would not be able
16 to operate. That you had purchased cooling towers
17 that maybe then you would be forced to looking at
18 going dry cooling.

19 MR. ELLISON: Is it fair then to say
20 that your concern is that Calpine/Bechtel would
21 invest substantial amounts of money, you know,
22 many millions of dollars toward construction of a
23 project without having secured a water supply and
24 a way of disposing of wastewater?

25 MR. O'HAGAN: Yes.

1 MR. ELLISON: Can you cite me any
2 example of any developer anywhere in the world
3 that you know of that's done that?

4 MR. O'HAGAN: No, I can't.

5 MR. ELLISON: In your opinion would that
6 be -- strike that.

7 Let's assume for the sake of argument,
8 that notwithstanding what I would characterize as
9 obvious financial incentive not to do that. that
10 your fears are realized, and Calpine/Bechtel, in
11 fact, builds a \$400 million white elephant.

12 With that assumption in mind, and
13 recognizing that you're testifying about water
14 issues on this topic, that project would consume
15 no water, correct?

16 MR. O'HAGAN: Correct.

17 MR. ELLISON: And that project would
18 have no wastewater, correct?

19 MR. O'HAGAN: Correct.

20 MR. ELLISON: So the water impact of
21 that project would be zero, correct?

22 MR. O'HAGAN: Correct.

23 MR. ELLISON: So is it fair to say that
24 staff is basing its concern here on an applicant
25 that would invest hundreds of millions of dollars

1 that it could not recover, and build a project
2 that has no water impact?

3 MR. O'HAGAN: In part, yes.

4 MR. ELLISON: Okay. Finally, let me ask
5 you a question about the option, as I understand
6 staff's proposal, two choices here. One is that
7 the condition be triggered by certification, and
8 the other that the trigger date be start of
9 construction.

10 If the trigger date were certification
11 and assuming, for the moment, that this Commission
12 were to have otherwise determined that an override
13 is appropriate, the staff's condition would, in
14 effect, nullify that override, would it not?

15 MR. O'HAGAN: As far as I know, no.

16 That the override is a decision --

17 MR. AJLOUNY: I object. Is that a legal
18 question?

19 PRESIDING MEMBER LAURIE: Who made the
20 objection? Okay, what was your question, Mr.
21 Ellison, I apologize, we weren't paying attention.

22 MR. ELLISON: I'm sorry, I'll restate
23 the question. The question is I asked the witness
24 to assume that this Commission had determined that
25 an override was appropriate in this case. And I

1 also asked him to assume that the Commission
2 adopted the certification date as the trigger date
3 for this requirement that they've proposed.

4 And the question was --

5 MR. WILLIAMS: We object. I thought we
6 agreed we wouldn't debate override issues in --

7 PRESIDING MEMBER LAURIE: He's asking
8 the question. Let us hear the question. Go ahead
9 and let me hear the question.

10 MR. ELLISON: Would you like me to start
11 over, I can do that.

12 PRESIDING MEMBER LAURIE: Yes, I think
13 that would be a good idea.

14 MR. ELLISON: Okay. I asked the witness
15 to assume hypothetically that the Commission in
16 this case determined that an override is
17 appropriate. And to further assume that the
18 Commission adopted staff's recommendation with the
19 option of the certification date being the trigger
20 date.

21 With those assumptions in mind my
22 question was would not the staff's condition, in
23 effect, give the local water service providers a
24 veto over the project and render the override
25 ineffective?

1 MR. WILLIAMS: Before they answer --

2 MS. WILLIS: I object --

3 MR. WILLIAMS: -- could you offer a
4 ruling or are you permitting hypothetical
5 questions with respect to override in this
6 hearing?

7 PRESIDING MEMBER LAURIE: We --

8 MR. WILLIAMS: We are?

9 PRESIDING MEMBER LAURIE: We have.

10 MR. WILLIAMS: Yes.

11 PRESIDING MEMBER LAURIE: We have said
12 go ahead and assume an override, what's your
13 answer to the question. If you have an answer,
14 other than pure speculation, answer. If you don't
15 know, the answer is I don't know.

16 MR. O'HAGAN: I don't know would be my
17 answer, Chris.

18 MS. WHITE: We think that would actually
19 be a legal opinion yet to be rendered.

20 MR. ELLISON: Okay, well, with the
21 understanding that we have earlier about this
22 issue, I'm going to stop here.

23 PRESIDING MEMBER LAURIE: Okay.

24 MR. ELLISON: Thank you.

25 PRESIDING MEMBER LAURIE: Let me ask a

1 question to either one of you. On the issue of
2 the propriety of approving a project without a
3 guaranteed water supply, is your revised proposal
4 based upon what you believe to be a legal mandate,
5 or do you believe it's a policy question?

6 MS. WHITE: Well, part of it is a policy
7 question, part of it is the legal mandate. We're
8 required to identify potential impacts associated
9 with a project on water supply and water quality.

10 And it is possible, because we don't
11 have a committed water supplier here, that we may
12 not actually be fully understanding the water
13 supply impacts or the water quality impacts.

14 If they don't get their recycled water
15 supply, and they want to pursue the development of
16 this project, in terms of the water supply for the
17 recycled water, we may not be fully addressing the
18 potential impacts of the water supply.

19 PRESIDING MEMBER LAURIE: If a
20 subsequent water supply is made available by any
21 methodology other than that which has been studied
22 in the analysis, some form of amendment and
23 further analysis would be required, would it not?

24 MS. WHITE: That's true. And it is our
25 opinion that we'd like to know that sooner than

1 later, because of the level of uncertainty.

2 Getting to the policy question, you
3 know, in all the cases that I've worked on,
4 there's been a committed water supply certainly by
5 the time you get to the FSA stage. And, you know,
6 it's defined by the time you get to your hearing
7 stage.

8 This one is quite different, unique, in
9 that when we go into the FSA stage and they
10 haven't chosen a purveyor, they've provided
11 options for purveyors that really don't have
12 access to the water they're proposing to use, and
13 then now just prior to the hearings we're finding
14 out from one of those potential purveyors that
15 it's very likely they may not serve --

16 PRESIDING MEMBER LAURIE: Okay, so it is
17 your testimony that in your opinion it is good
18 public policy to have a reflection of an assured
19 water supply prior to construction, is that
20 correct?

21 MS. WHITE: Yes.

22 PRESIDING MEMBER LAURIE: Thank you.
23 And when the question was asked of the two of you
24 what's the public policy foundation for that,
25 Mr. O'Hagan responded the risk to the applicant.

1 What is the detriment to the public in
2 general, if there is construction without a water
3 supply? Is there such? And if so, what might
4 that be?

5 MS. WHITE: I think it takes off of what
6 Mr. O'Hagan had mentioned where you actually have
7 construction begun on something while you're
8 trying to negotiate a water supply. And if those
9 water supplies fall through, we've already
10 committed to the development of a project. And
11 because of that investment, may then have to go to
12 another supply which would necessitate an
13 amendment.

14 And as I mentioned earlier, we were just
15 trying to avoid having that done during the
16 construction, and try and get that information
17 earlier because if that change needs to be made,
18 whether it's to dry cooling or to potable water
19 supply, and making certain findings, that that's
20 appropriate, then we would like to be able to do
21 that --

22 PRESIDING MEMBER LAURIE: Okay, but what
23 is the detriment to the general public?

24 MR. O'HAGAN: Well, certainly
25 constructing a major industrial facility, even if

1 there's not significant say erosion impacts to it,
2 you are disturbing a lot of land in making the
3 effort.

4 And even though once again it's not
5 significant, it's a disturbance that would be made
6 in the final analysis, unnecessary.

7 PRESIDING MEMBER LAURIE: Okay, so is it
8 your testimony that the detriment to the public is
9 the impacts without the accordant benefits derived
10 from the project?

11 MS. WHITE: Yes.

12 MR. O'HAGAN: Yes.

13 PRESIDING MEMBER LAURIE: Okay, thank
14 you, that's all I have. Mr. Valkosky.

15 HEARING OFFICER VALKOSKY: Excuse me,
16 just a follow-up clarification. Ms. White, did I
17 understand you correctly to say that the water
18 supply arrangements in the present case are less
19 defined than they are in other cases?

20 MS. WHITE: Usually by the time we get
21 to the FSA stage we have will-serve letters,
22 commitments by districts that they would not only
23 be capable of serving the project, but that they
24 would serve the project.

25 In this case we have an identification

1 of capability, but not a commitment to actually
2 provide the service.

3 We also have clear indication from the
4 City that they do not have the infrastructure in
5 place at the property line to serve this project.
6 That if they were the ones responsible for
7 constructing that line, that it would be well into
8 the future before the South Bay Water Recycling
9 line is built, if they were the responsible party
10 to do so.

11 And that with that being the case, we
12 may not have recycled water to this project.

13 HEARING OFFICER VALKOSKY: And from that
14 is it also, in your opinion, fair to conclude that
15 it is uncertain in terms of time when such water
16 would be made available, if at all?

17 MS. WHITE: Well, certainly. Because if
18 you don't have a commitment at this time that the
19 City would be able to initiated that process, or
20 assist the applicant in initiating that process,
21 you have to go through the additional steps of
22 obtaining the agreements, and then working out
23 with whatever purveyor is chosen to actually
24 construct those lines.

25 And a lot of that, at this point in

1 time, has not been defined, where in other cases
2 it is well before this stage.

3 HEARING OFFICER VALKOSKY: Okay. And
4 given all that, can you -- strike that. Thank
5 you.

6 Is applicant done with its cross of
7 these witnesses?

8 MR. ELLISON: I'm just going to follow
9 up on a couple of the points that the Committee's
10 questions elicited.

11 And I'll direct this to either of you.
12 In the prior cases that you referenced, if any of
13 those applicants chose not to build the project at
14 all, they could do that, correct?

15 MR. O'HAGAN: Yes.

16 MR. ELLISON: And if they chose to not
17 proceed with the water supply that was assumed in
18 that project, and come back with an amendment,
19 they could do that, correct?

20 MR. O'HAGAN: Yes.

21 MR. ELLISON: And if they chose to
22 proceed with the project and construct it half way
23 and stop, they could do that, correct?

24 MR. O'HAGAN: Yes.

25 MR. ELLISON: And isn't it true that in

1 all of those situations the staff relies upon the
2 economic interest of the applicant in proceeding
3 with the project and earning a return on it to
4 prevent those things from happening?

5 MS. WHITE: At least from our standpoint
6 I don't think we rely on that. I mean that isn't
7 part of anything I worry about when I'm doing my
8 analysis.

9 MR. AJLOUNY: Objection, I don't think
10 these witnesses are qualified for this kind of
11 question.

12 HEARING OFFICER VALKOSKY: Mr.
13 Ajlouny, --

14 MR. ELLISON: I'll withdraw that, I'll
15 withdraw that last question.

16 HEARING OFFICER VALKOSKY: -- these
17 witnesses are certainly experienced, and they're
18 capable of indicating that they can't answer the
19 question. But thank you for your concern.

20 MR. AJLOUNY: I was just trying to
21 encourage them.

22 HEARING OFFICER VALKOSKY: Mr. Ellison,
23 anything else?

24 MR. ELLISON: One other thing. We
25 talked about the concern about the potential

1 impacts of building half the project, or building
2 a project that I think the public interest, you
3 narrowed that down to the construction impacts of
4 building a project that didn't run, is that
5 correct?

6 MR. O'HAGAN: Yes, I identified soils
7 because that's what, soils and water is what we're
8 testifying to. Certainly there could be other
9 things.

10 MR. ELLISON: Okay. It's the
11 applicant's understanding that if they were to
12 construct the project, at the end of the life of
13 that project, 30 years, if the license has general
14 conditions, conditions for closure, that deal with
15 how do you restore that site and mitigate,
16 basically how do you end, wind up the project, is
17 that correct?

18 MR. O'HAGAN: Yes.

19 MR. ELLISON: So those general
20 conditions that are in the license that deal with
21 analyzing environmental impacts associated with
22 the project being there would apply at the end of
23 the 30-year life of the project, is that correct?

24 MR. O'HAGAN: Yes, it is.

25 MR. ELLISON: And those general

1 conditions of closure would apply if the project
2 closed after 15 years, is that correct?

3 MR. O'HAGAN: That's correct.

4 MR. ELLISON: And those general
5 conditions would apply if the project closed at
6 the end of the first year of operation?

7 MR. O'HAGAN: Correct.

8 MR. ELLISON: And those general
9 conditions would apply if the project was
10 constructed and never operated, and then closed?

11 MR. O'HAGAN: Yes.

12 MR. ELLISON: So the license does
13 include a provision to deal with returning the
14 site to its original condition, is that correct?

15 MR. O'HAGAN: Yes.

16 MR. ELLISON: Thank you.

17 HEARING OFFICER VALKOSKY: Okay, Ms.
18 Dent, cross-examination?

19 MS. DENT: Just a couple questions.

20 CROSS-EXAMINATION

21 BY MS. DENT:

22 Q If I understood the witnesses correctly,
23 it is highly unusual to have a project in this
24 status where the water supply and the wastewater
25 discharge arrangements for the project aren't in

1 place before the project comes before the
2 Commission on hearing, is that my understanding of
3 the testimony?

4 MS. WHITE: It's unusual that they don't
5 have the commitments, and usually those come in
6 the form of will-serve letters. That's not to be
7 confused with the interconnection type agreements.

8 MS. DENT: And so it's the
9 interconnection type agreements that you indicated
10 that you're looking for in your revised condition?

11 MS. WHITE: Right, because we're so late
12 in the process.

13 MS. DENT: Now, do you know of any other
14 specific instances where a project has been
15 certified without an assured source of water
16 supply and an assured arrangement for wastewater
17 discharge before certification?

18 MR. HARRIS: I'm going to object and ask
19 you to clarify assured supply. I'm not sure what
20 you mean by that.

21 HEARING OFFICER VALKOSKY: Okay, Ms.
22 Dent, explain what you mean by that, and the
23 witnesses can answer.

24 MS. DENT: Where the pipeline for water
25 supply was seven to ten miles away, and the

1 project applicant didn't have any existing
2 agreement or contract in place to bring the water
3 to the project.

4 MR. O'HAGAN: I would have to say
5 there's one case, the High Desert Power project,
6 located in Victorville. They are going to rely on
7 state water project water. It's given the
8 provisions of the state water project, that's an
9 interruptible supply. The Mojave Water Agency,
10 who is the wholesaler if you will there of the
11 state water project water will only approve water
12 deliveries to customers such as the power plant on
13 an annual basis.

14 And the agency, Mojave Water Agency,
15 would not rule on an application from High Desert
16 in terms of whether they would get state water
17 project water until the Energy Commission's
18 process was completed.

19 And once again, that's an annual request
20 that the power plant would have to do. And some
21 years, you know, because there's no water or
22 whatever reason they may not have any water, then
23 given the conditions of certification they may not
24 operate.

25 MS. DENT: And now what are their

1 provisions of High Desert for wastewater
2 discharge?

3 MR. O'HAGAN: They were using a zero
4 discharge, so it certainly wasn't an issue. And
5 in terms of wastewater discharge in all the cases
6 I've worked on, it's never been an issue.

7 MS. DENT: You've never had one that
8 didn't have some provision for discharge unless
9 they went zero discharge?

10 MR. O'HAGAN: Right. The ones that are
11 going to discharge to the sewer usually we had
12 indication from the wastewater treatment facility
13 that they would accept the wastewater.

14 MS. DENT: Now in terms of the air
15 cooling I think was the reference, there are
16 plants that use that form of cooling and they
17 don't use water at all for cooling, is that
18 correct?

19 MR. O'HAGAN: Correct.

20 MS. DENT: Okay. Now, what about water
21 during construction? I've never seen a project
22 that was constructed without some source of water
23 supply to the project. Was there any analysis of
24 water during construction if there's no water to
25 the project during construction?

1 MR. HARRIS: I'm going to object and ask
2 you to clarify. Are you talking about an
3 interconnection agreement or what are you saying?

4 MS. DENT: Well, I'm asking the witness'
5 understanding of, for example, water that would be
6 mixed with concrete, water that would be used for
7 dust control, water that would be used during the
8 construction process.

9 MS. WHITE: We looked at the issue of
10 water demand during construction. The proposal
11 was that the chosen water purveyor would provide
12 the demand requirements for construction to the
13 project.

14 It's a concern if you start construction
15 and you don't have those agreements in place.

16 MS. DENT: So physically that's a
17 limitation on the construction under the proposal
18 as --

19 MS. WHITE: Sure.

20 MS. DENT: -- it was submitted? I want
21 to take just a moment to review the witnesses'
22 testimony to make sure I don't have anything more,
23 if you'll give me just a minute.

24 HEARING OFFICER VALKOSKY: Sure. Ms.
25 Dent, while you're doing that I've just got a

1 couple points of clarification on the High Desert
2 decision, if I may.

3 Mr. O'Hagan, is it not true that in High
4 Desert the water purveyor indicated a willingness
5 to provide the project applicant with water, as it
6 was available?

7 MR. O'HAGAN: The Victor Valley Water
8 District, which would be the retailer in this
9 situation, yes, was willing to provide water. The
10 ultimate water source from Mojave Water Agency,
11 however.

12 HEARING OFFICER VALKOSKY: Right, and is
13 it not true that also in the High Desert case
14 conditions of certification required a water bank
15 which would provide operational water for the
16 project during years of drought or other instances
17 when water may --

18 MR. O'HAGAN: Yes.

19 HEARING OFFICER VALKOSKY: -- not be
20 available?

21 MR. O'HAGAN: Yes, that's true.

22 HEARING OFFICER VALKOSKY: Thank you.
23 Continue, Ms. Dent.

24 MS. DENT: Thank you. Is it your
25 understanding of your condition of certification

1 number 6 related to the industrial waste discharge
2 permit, and this is again the permit that you're
3 talking about coming later, I think, still?

4 MS. WHITE: Yes.

5 MS. DENT: Is it your understanding of
6 that condition that compliance with all
7 restrictions and conditions imposed by the City
8 could include the equivalent of zero discharge?

9 MS. WHITE: Yes.

10 MS. DENT: On page 525 of your testimony
11 in the middle of the page under groundwater
12 impacts there's a sentence that indicates, that
13 according to the applicant interruptions in the
14 recycled water supply system are expected to occur
15 two to three times a year up to 72 hours in
16 duration, but long, unplanned interruptions may
17 also occur.

18 It's the third sentence. I might have
19 the wrong page number; sometimes the internet
20 doesn't print these off the same.

21 MS. WHITE: Right, I understand. I
22 remember that section with the --

23 MS. DENT: So, did you take into
24 account, even assuming the recycled water does
25 come, what would happen during these long

1 unplanned interruptions in the recycled water
2 supply?

3 MS. WHITE: Right. That was included in
4 part of the analysis of the use for backup of
5 potable water supplies. And the applicant, at
6 staff's request, working with the Santa Clara
7 Valley Water District, conducted a groundwater
8 analysis of using potable water, not only to meet
9 their domestic and process water needs, but then
10 to also provide no more than 45 days annually of
11 water, with the longest continuous duration being
12 30 days, which was chosen as a result of reviewing
13 the history of the project and choosing the
14 longest period of time it was down.

15 MS. DENT: Well, I didn't see in the
16 condition of certification number 1 the 72-hour
17 reference or the 30-day reference. I saw a
18 reference to not to exceed 45 days in any one
19 year.

20 So, I'm just wondering if there was --

21 MS. WHITE: We didn't necessarily
22 reference the specific 72-hour periods because we
23 chose those periods based on how the system is
24 currently designed for maintenance purposes or
25 things like that, periodically shut down for 72

1 hours.

2 What we were trying to do was trigger it
3 to not exceeding a certain number of days per year
4 maximum. And then if, by chance, you have to
5 exceed that 45 days, come to the Commission,
6 explain why, and then we will approve it or not.

7 MS. DENT: My question, I'm sorry if I'm
8 not being very articulate, I think I understood
9 the testimony to be that the Water District had
10 really only indicated a 30-day interruption in the
11 supply of the water, and maybe that's a 30-day
12 continuous period?

13 MS. WHITE: Yes.

14 MS. DENT: But that's not reflected in
15 here, in the conditions of certification?

16 MS. WHITE: Right.

17 MS. DENT: And my last question really
18 has to do with the LORS. And I believe I
19 understood your testimony, and again I'm going to
20 stick to just soil and water resources. But the
21 question about the riparian corridor, for me, was
22 triggered in your testimony as reference to the
23 City's riparian corridor policy.

24 And now that it's possible at least that
25 the project will not be located in the City, for

1 your portion of the testimony is there some need
2 to go back and look at County ordinances?

3 MS. WHITE: Yes.

4 MS. DENT: Thank you.

5 HEARING OFFICER VALKOSKY: Ms. Cord.

6 MS. CORD: Thank you, I have a couple of
7 questions.

8 CROSS-EXAMINATION

9 BY MS. CORD:

10 Q This is for Ms. White. Would you
11 consider it a responsible decision on the part of
12 an agency with authority and jurisdiction to
13 certify a finding of no significant impact when
14 there's a high degree of uncertainty as to if and
15 how the required elements of that project may be
16 delivered?

17 MS. WHITE: Could you restate that,
18 please?

19 MS. CORD: Certainly. Would you
20 consider it a responsible decision on the part of
21 an agency with authority and jurisdiction to
22 certify a finding of no significant impact when
23 there's a high degree of uncertainty as to if and
24 how the required elements of that project may be
25 delivered?

1 MS. WHITE: The project, as proposed, if
2 it was certified with conditions that could not be
3 proven, --

4 MS. CORD: Exactly.

5 MS. WHITE: -- I would find that it
6 would be unprudent.

7 MS. CORD: Unprudent, good, thank you.
8 I believe I heard applicant counsel questioning
9 you about the low likelihood that a significant
10 investment would be made with no hope of ever
11 recovering that investment, is that right? Were
12 you questioned --

13 MS. WHITE: That's what I understood
14 them to say.

15 MS. CORD: In a sense wouldn't that
16 reinforce the appropriateness of your proposed
17 changes to soil and water conditions 1 and 6 that
18 it would be improper to begin construction without
19 the required elements in place, or some
20 commitment?

21 MS. WHITE: That was part of the reason
22 why we were recommending the additions the way we
23 were.

24 MS. CORD: Good, thank you. Based on
25 that, do you think it's ever possible for a

1 company to make a decision that's not based on
2 financial considerations?

3 MS. WHITE: Anything is possible.

4 MS. WILLIS: I just want to clarify
5 these, as I was trying with Mr. Ellison, these
6 witnesses are not here to testify on business
7 strategies, but the impact on the environment and
8 other compliance with LORS in regards to soil and
9 water resources.

10 HEARING OFFICER VALKOSKY: Thank you for
11 that clarification, Ms. Willis. I think the
12 parties should keep that in mind. Again, these
13 are technical witnesses --

14 MS. CORD: Well, I'm just --

15 HEARING OFFICER VALKOSKY: -- on soil
16 and water resources.

17 MS. CORD: I understand that, thank you.
18 I was sort of following up on the question that
19 applicant counsel had been permitted to ask about
20 the investment, likely, and whether the return on
21 that investment were -- what the likelihood of
22 that might be.

23 And I guess my final question along
24 those lines is do you think it's possible for a
25 company to ever make a bad business decision?

1 PRESIDING MEMBER LAURIE: The Committee
2 deems that speculative and irrelevant.

3 MS. CORD: Thank you.

4 PRESIDING MEMBER LAURIE: Ms. White,
5 please do not respond.

6 MS. CORD: Thank you. We heard some
7 conditions discussed where a project might be
8 partially built, or shut down after one year, or
9 never used and shut down, or shut down after 15
10 years. Do you remember that line of question?

11 MS. WHITE: Yes.

12 MS. CORD: In your experience with the
13 applicants and water contracts and that sort of
14 thing, do you think it could be possible for a
15 partially completed construction to be used as
16 some sort of leverage to obtain permits?

17 MS. WHITE: I'm not really qualified to
18 talk about business strategies that may or may not
19 be used.

20 MS. CORD: Okay, thank you. I think
21 there was also some questions about the impact to
22 the community of the construction.

23 MS. WHITE: Yes.

24 MS. CORD: Okay, and I realize, of
25 course, that soil and water is the area that you

1 two are testifying to. In your experience with
2 the Commission do you think there are other
3 impacts of building of power plants besides
4 construction impacts, visual impacts, dust?

5 MS. WHITE: Of course.

6 MS. CORD: Okay, thank you. That's all.

7 MS. WILLIS: Just could I ask my
8 witnesses to get a little bit closer to the
9 microphones. Thank you.

10 PRESIDING MEMBER LAURIE: Question as a
11 follow up to Ms. Cord's questions. Again, on the
12 policy issue, or on the change of condition issue.

13 Are either one of you aware of an Energy
14 Commission policy or an Energy Commission
15 regulation that mandates evidence of service prior
16 to either certification or construction, or do you
17 believe that to be a discretionary policy decision
18 on the part of the Commission?

19 MS. WHITE: Just a moment.

20 (Pause.)

21 MS. WHITE: What I'm trying to do is
22 clarify our practice at this time.

23 PRESIDING MEMBER LAURIE: Okay, well,
24 I'm not asking you about your practice, what --

25 MS. WILLIS: Maybe Mr. O'Hagan should

1 answer --

2 PRESIDING MEMBER LAURIE: -- I'm asking
3 is is your practice something more than your
4 practice. Your practice is what you would
5 normally do. What I'm asking is in your view does
6 Energy Commission law either express policy, which
7 can be changed, or regulation mandated, or is it
8 discretionary, is it a discretionary policy
9 decision.

10 You've testified as to what your past
11 practice is. I'm asking you does, in your
12 opinion, Energy Commission law mandate proof of
13 service.

14 MS. WHITE: No.

15 PRESIDING MEMBER LAURIE: Thank you.
16 That's all I have, Mr. Valkosky.

17 HEARING OFFICER VALKOSKY: Thank you.
18 Mr. Scholz.

19 MS. LUCAS: Could I add one more thing
20 to Elizabeth Cord's response.

21 HEARING OFFICER VALKOSKY: Okay.

22 RECROSS-EXAMINATION

23 BY MS. LUCAS:

24 Q And that is, on your soils-1 and -6
25 categories, when you get the supplemental material

1 from the applicant, would it be possible to get a
2 visual, well, a picture of exactly where this 150-
3 foot County ordinance of a riparian corridor,
4 where the trees will be retained? Because it
5 affects the grading and revegetation. Unless one
6 sees an actual plan that sketches it all out, the
7 responses to date were very vague as to where that
8 150-foot setback was going to impact the project.

9 So could you ask that they have the map,
10 as well as the pertinent County criteria for the
11 grading process, the times of grading, the months.
12 I think there are certain restrictions. And as I
13 say, the setback and what trees will be preserved.

14 Will that be possible to request that
15 before you get to the wildlife biological review,
16 because it's very important. It affects that.

17 MS. WHITE: I understand. The way we
18 address it is actually in soils and water-3,
19 asking for the final erosion and sedimentation
20 control plan. In there they will identify also
21 the revegetation program.

22 MS. LUCAS: But I think --

23 MS. WHITE: What you're getting at is
24 more in terms of compliance with land use and
25 the --

1 MS. LUCAS: What trees will be --

2 MS. WHITE: -- biological --

3 MS. LUCAS: -- preserved, yes, --

4 MS. WHITE: -- and I would defer to
5 those technical areas.

6 MS. LUCAS: Could that be in hand by the
7 biological review?

8 MS. WHITE: I'm deferring you to that
9 discussion. It's beyond the scope of this
10 analysis.

11 MS. LUCAS: But it's needed for the
12 analysis, --

13 HEARING OFFICER VALKOSKY: Ms. Lucas, --

14 MS. LUCAS: -- I mean for the grading --

15 HEARING OFFICER VALKOSKY: Ms. Lucas,
16 staff has responded. She said it's not within
17 their view of the material contained within this
18 technical area, and suggest you bring it up either
19 in the land use or the biological resources.

20 MS. LUCAS: I guess it would have been
21 helpful to have known about the retention basin
22 setback. There were a lot of cases this evening
23 that it would have been helpful to have had --

24 HEARING OFFICER VALKOSKY: Ma'am, this
25 is cross-examination, this is not time to seek

1 additional data.

2 Mr. Scholz.

3 CROSS-EXAMINATION

4 BY MR. SCHOLZ:

5 Q If the project proceeds hypothetically
6 on an override basis is it important to understand
7 all the parameters of certification regarding the
8 water permits in order to identify the benefits of
9 the project versus the negatives of the project?

10 If the -- were you prepared to answer?

11 MS. WHITE: Could you reword your
12 question, please? I'm not sure what you're
13 asking.

14 PRESIDING MEMBER LAURIE: Mr. Scholz,
15 you can assume override, and then ask about
16 repercussions, but at this point we're not going
17 to get into the criteria of making the override
18 decision, because that's coming when we scheduled
19 it.

20 So, I thought that's maybe where you
21 were going. Are you assuming an override
22 decision?

23 MR. SCHOLZ: I'm trying to understand a
24 hypothetical override where you have to assess
25 benefits versus negatives and making that

1 determination, the person ruling on this. And if
2 you don't know if the project's going to be
3 operational how can you assess -- you can't assume
4 benefits anymore.

5 MS. WILLIS: Ms. White is not qualified
6 to answer this question. We'll have a witness on
7 override issues later on in the process.

8 MR. SCHOLZ: Ms. White, any identified
9 benefits by you in your testimony would not be
10 realized if this project was not built and
11 operated?

12 PRESIDING MEMBER LAURIE: That's outside
13 of the scope.

14 MR. SCHOLZ: Very well. Back to the
15 South Bay Water Recycling routing questions that I
16 was attempting to ask earlier.

17 Is the staff panel aware if the
18 applicant was involved in notifying anyone along
19 the pipeline route?

20 MS. WHITE: It is not my knowledge that
21 the applicant was involved in any of that
22 notification.

23 MR. SCHOLZ: Was the CEC involved in
24 notification of anyone along the pipeline route?

25 MS. WHITE: Yes.

1 MR. SCHOLZ: How many people were
2 notified?

3 MS. WHITE: I can't tell you right now,
4 I don't have the exact numbers. We are obligated
5 to develop a mailing list of persons within a
6 certain distance of the facility and linears. And
7 they are part of our general mailing list.

8 MR. SCHOLZ: Can you identify the
9 criterion you used to select those that were
10 notified?

11 MS. WHITE: I can't cite it right now.

12 MR. SCHOLZ: It's no where in your
13 testimony?

14 MS. WHITE: No.

15 MR. SCHOLZ: Do you know how these
16 people were notified?

17 MS. WHITE: By mail.

18 MR. SCHOLZ: Were these people told that
19 they would be impacted by the pipeline for this
20 project, or were they just notified of the pending
21 power plant proposal in Coyote Valley?

22 MS. WILLIS: I'm going to instruct my
23 witness only to the extent that she knows. She's
24 already testified this isn't part of her
25 testimony. Only if you know.

1 MS. WHITE: I don't know what was
2 exactly in those notices. I can't tell you and it
3 wasn't part of my testimony.

4 MR. SCHOLZ: Were you not the staff that
5 did the linear analysis?

6 MS. WHITE: But we aren't the staff that
7 is responsible for the notification. And there is
8 a difference between assessing environmental
9 impacts and doing administrative notification.

10 MR. SCHOLZ: Does the record reflect
11 that you satisfied any CEQA requirements to notify
12 people along the --

13 MS. WILLIS: I'm going to --

14 MR. SCHOLZ: -- the linear routes?

15 MS. WILLIS: -- ask what record are you
16 referring to?

17 MR. SCHOLZ: The FSA testimony that
18 you're submitting as testimony.

19 MS. WHITE: That isn't a part of it.

20 MR. SCHOLZ: Mr. Valkosky, I've asked
21 several times what topic does --

22 HEARING OFFICER VALKOSKY: I understand,
23 I understand. Just a second. Ms. Willis, are
24 either you or Mr. Richins prepared to address
25 noticing along the pipeline route?

1 MS. WILLIS: Mr. Richins can answer
2 those questions.

3 HEARING OFFICER VALKOSKY: Okay, so when
4 we're finished with these witnesses we'll have Mr.
5 Richins address the noticing. Again, these
6 witnesses are technical witnesses. Noticing is
7 clearly not part of the testimony.

8 Ms. White has stated multiple times she
9 was not involved in the noticing. She is a
10 technical analyst.

11 MR. SCHOLZ: I understand and accept
12 that answer. I would just ask for guidance from
13 you where should we ask those questions?

14 HEARING OFFICER VALKOSKY: I just stated
15 that --

16 MR. SCHOLZ: Right, appreciate --

17 HEARING OFFICER VALKOSKY: -- Mr.
18 Richins --

19 MR. SCHOLZ: -- you've now afforded that
20 opportunity. Thank you.

21 HEARING OFFICER VALKOSKY: -- will do
22 it. Do you have any other cross for these
23 technical witnesses, Mr. Scholz?

24 MR. SCHOLZ: No, I do not.

25 HEARING OFFICER VALKOSKY: Mr. Ajlouny.

1 MR. AJLOUNY: Yes.

2 CROSS-EXAMINATION

3 BY MR. AJLOUNY:

4 Q Ms. White, in regards to the need of
5 water on the site and the construction, and when
6 you're beginning construction, and what I want to
7 focus in, I should have probably started with
8 that, what I want to focus in on is public safety
9 in the sense of Mr. Laurie's comments on what
10 public safety issues would there be if there's
11 construction without water. So that's where I'm
12 headed.

13 So one of the things I was just thinking
14 of is, first of all, do you see it being a public
15 safety issue if you clear some area and you lay
16 down supplies, like woods and things like, you
17 know, pieces of material on the ground, and kids
18 maybe getting involved and getting hurt.

19 Is that --

20 MS. WILLIS: I'm going to object. Can
21 you relate this to the soil and water testimony?

22 MR. AJLOUNY: Well, I'm relating it to
23 Commissioner Laurie's comments about he asked a
24 question of what safety issues, or what -- I think
25 the words were public concerns.

1 PRESIDING MEMBER LAURIE: I asked what
2 was the public detriment.

3 MR. AJLOUNY: Yes, so I'm asking would
4 it be a -- okay, thank you for the words,
5 Commissioner.

6 What public -- oh, man, I wish I could
7 say that word, say that again -- detriment, with a
8 "d", or do you see any for materials being laid
9 out for this project?

10 HEARING OFFICER VALKOSKY: I'm sorry,
11 that's just way beyond the scope of soil and water
12 resources.

13 MR. AJLOUNY: I understand that, but I'm
14 just following the Commissioner's question, any
15 public -- I guess what I'm trying to point out is
16 I feel there's a lot of public --

17 HEARING OFFICER VALKOSKY: Okay, now,
18 Issa, you're testifying now.

19 MR. AJLOUNY: Okay.

20 HEARING OFFICER VALKOSKY: Ask
21 questions.

22 MR. AJLOUNY: Well, I am.

23 HEARING OFFICER VALKOSKY: Then please
24 do.

25 MR. AJLOUNY: I'll try to start over.

1 If there was a fire on the power plant as it's
2 being built, or by the materials, is there going
3 to be water there to put it out? How would that
4 be handled? Maybe that's a better question.

5 Did I meet the requirements in that one?

6 MS. WHITE: The way that I understand
7 the applicant's proposal they would have entered
8 into an agreement with a purveyor to provide water
9 supplies for construction by that point. That
10 would be adequate to serve any fire requirements,
11 or construction requirements.

12 MR. AJLOUNY: So, can we add that
13 concern to another reason why you wouldn't want
14 construction to start until the water agreement is
15 in place?

16 MS. WHITE: You're more than welcome to.

17 MR. AJLOUNY: No, --

18 (Laughter.)

19 MR. AJLOUNY: You're so cute. In your
20 expert opinion would that -- I'm just trying to
21 add some more reasoning of public safety issue,
22 you know, but not a public safety topic.

23 PRESIDING MEMBER LAURIE: Okay, that's
24 fine. Ms. White answer yes or no.

25 MS. WHITE: Yes. Sure.

1 MR. AJLOUNY: Trying to help you out,
2 buddy.

3 (Laughter.)

4 MR. AJLOUNY: Ah, jeez, man, I'm just
5 losing it here. In the AFC process of -- and this
6 is just a general question -- are you involved
7 with, I don't know, certifying the AFC, basically
8 saying that the AFC has enough information to
9 accept by the Commissioners, or is that a
10 Commissioner thing?

11 MS. WHITE: For my --

12 MR. AJLOUNY: Data adequacy, thank you.

13 MS. WHITE: For my technical area, yes.

14 MR. AJLOUNY: Okay. So, in the area of
15 water and soil, if you knew that there was a good
16 chance, or there's no reason to have an agreement
17 for connection, or whatever the words you use, I
18 apologize, would you have even considered saying
19 that it -- what was that word -- that it would be
20 data adequate in your topic?

21 PRESIDING MEMBER LAURIE: That's not
22 relevant, sir. We've already discussed that.
23 It's a Commission decision that has already been
24 determined. And we're not going to go back and
25 revisit data adequacy.

1 MR. AJLOUNY: No, I wasn't trying to say
2 it's not data adequate. I guess I was just trying
3 to point out that if we knew this way back when --
4 I'm trying to show a strategy of the leverage that
5 could be played by getting to points and then
6 saying we're here, we're here.

7 Because in workshops we discussed the
8 possibility of --

9 HEARING OFFICER VALKOSKY: Okay, okay,
10 Mr. Ajlouny, I just am at a loss to understand how
11 that is related to the technical topic areas on
12 which you're supposed to be performing cross-
13 examination.

14 That's the limit. You've got the
15 technical experts here who have, although by my
16 standards, a broad range of expertise; by other
17 standards a fairly discrete area on which they're
18 testifying.

19 Would you please confine your questions
20 to their testimony, not things like data adequacy,
21 or a hypothetical strategy of some sort.

22 Thank you.

23 MR. AJLOUNY: I understand what you're
24 saying, Mr. Valkosky. I'm just following on what
25 other questions were talked about before I had a

1 chance to speak. And I feel -- I don't want to
2 argue or anything, but I'm just trying to follow
3 on that.

4 Did we have discussions in workshops
5 about what would happen if water was not agreed
6 on, connections and things like that, in
7 workshops? Did that come up quite a bit in our
8 discussions, Lorraine, do you remember?

9 MS. WHITE: There wasn't a lot of
10 discussion on those items because --

11 MR. AJLOUNY: But we did discuss it?

12 MS. WHITE: And the idea that was
13 discussed was more around the lines of the
14 capacity, what type of infrastructure would be
15 required, that nature.

16 MR. AJLOUNY: So it wasn't --

17 MS. WHITE: Types of approvals that we
18 were waiting on to have any kind of further
19 negotiations between the applicant and the City
20 continue.

21 MR. AJLOUNY: Okay, so it wasn't really
22 discussed what I just said?

23 MS. WHITE: No.

24 MR. AJLOUNY: Okay, so then --

25 MS. WHITE: Not --

1 MR. AJLOUNY: -- you were assuming that
2 the connection would not be an issue?

3 MS. WHITE: Correct.

4 MR. AJLOUNY: Okay, and in that
5 assumption you came out with your FSA in favor,
6 let's say, not unmitigatable issues, in the FSA?

7 MS. WHITE: Correct.

8 MR. AJLOUNY: Assuming that. Okay, let
9 me see. If you had the opportunity to know what
10 the City has felt before the FSA came out would
11 that have been your preference for your analyzing,
12 your analysis?

13 MS. WHITE: I'm obligated to have my
14 analysis based on the information available at the
15 time. It's always preferred that we get as much
16 information as you possibly can, but the
17 bottomline is you base your analysis on what you
18 know.

19 MR. AJLOUNY: Would your testimony have
20 changed in the best of your knowledge if your
21 analysis was done knowing what you know today?

22 MS. WHITE: Well, that's why I'm
23 recommending the changes that I am. Because we do
24 know something different. And as a result of
25 that, are now recommending some additions to the

1 testimony.

2 MR. AJLOUNY: And you're recommending
3 those because you're trying to be consistent on
4 all the water and soil applicants and AFCs that
5 you're dealing with?

6 MS. WHITE: We're attempting to show
7 some consistency, and to also provide a surety
8 that there is a supply and a method to treat the
9 waste.

10 MR. AJLOUNY: So, you're definitely, in
11 your expert opinion, you're being very consistent
12 with all the other work you do on other
13 applications?

14 PRESIDING MEMBER LAURIE: She's already
15 answered yes.

16 MR. AJLOUNY: I'm trying to really drill
17 that home.

18 HEARING OFFICER VALKOSKY: Well, that's
19 not necessary.

20 MR. AJLOUNY: Okay.

21 HEARING OFFICER VALKOSKY: Especially at
22 this time. It's just repetitive. Do you have --

23 MR. AJLOUNY: I have no further
24 questions.

25 HEARING OFFICER VALKOSKY: I'm sorry.

1 Thank you.

2 MR. AJLOUNY: Oh, I do have one small
3 objection on something I wanted to say awhile ago.
4 And this is just a procedure thing, Stan. Is it
5 proper that staff would come and talk to the
6 Commissioners during these hearings and whisper in
7 ears and stuff? Is that a proper thing to do?

8 HEARING OFFICER VALKOSKY: It's
9 perfectly appropriate as long as there is no
10 substantive discussion taking place.

11 MR. AJLOUNY: Okay, thank you.

12 HEARING OFFICER VALKOSKY: Let's see,
13 Mr. Garbett. And, again, I understand, Mr.
14 Garbett, you only have a couple of questions, is
15 that correct?

16 MR. GARBETT: Less than six.

17 PRESIDING MEMBER LAURIE: Well, let's
18 not count the questions, because you have an
19 exponential factor automatically built in.

20 (Laughter.)

21 MR. GARBETT: Six areas.

22 PRESIDING MEMBER LAURIE: But we will
23 not have redundancy, sir.

24 MR. GARBETT: Thank you.

25 PRESIDING MEMBER LAURIE: So, ask your

1 question.

2 CROSS-EXAMINATION

3 BY MR. GARBETT:

4 Q Is there other sources of water that may
5 be acceptable besides potable water, recycled
6 water, such as raw water from the Central Valley?

7 MS. WHITE: We didn't analyze anything
8 like that.

9 MR. GARBETT: If a power plant was
10 partially constructed or slowed down or stopped,
11 would it become a condition called blighted?

12 MS. WILLIS: I don't think the witness
13 is prepared to answer a question like that.

14 PRESIDING MEMBER LAURIE: I sustain the
15 objection.

16 MR. GARBETT: Were you aware in your
17 looking up the standards for the recycled water,
18 that the South Bay Water project is a District
19 that has definite boundaries, whose bondholders
20 will not allow the water to go beyond its
21 District?

22 MS. WHITE: I'm aware it's a Joint
23 Powers Authority, that it does serve a certain
24 area. I do not know the role of the bondholders.

25 MR. GARBETT: Are you aware that the

1 sewage treatment plant is a different set of
2 stakeholders than the South Bay Water project?

3 MS. WHITE: I wasn't concerned with
4 stakeholders in my analysis. That's not the scope
5 of the analysis.

6 MR. GARBETT: To the detriment of the
7 project, if the project was not built would this
8 affect the bondholders and stockholders in the
9 particular firm that's building this?

10 MS. WHITE: That's beyond the purview of
11 my analysis.

12 MR. GARBETT: That was a question on
13 public detriment. That concludes my questions,
14 thank you.

15 HEARING OFFICER VALKOSKY: Thank you,
16 Mr. Garbett. Mr. Williams.

17 MR. WILLIAMS: Yes, sir. Before I begin
18 I believe I have about 45 minutes of questions.
19 Is it your intention to continue the proceedings
20 over --

21 PRESIDING MEMBER LAURIE: Yes.

22 MR. WILLIAMS: -- until tomorrow?

23 PRESIDING MEMBER LAURIE: No. The
24 intention is to complete it tonight.

25 MR. WILLIAMS: All parties' testimony on

1 water?

2 PRESIDING MEMBER LAURIE: Correct.

3 MR. WILLIAMS: Isn't there some
4 regulation that after nine hours don't we have to
5 adjourn?

6 PRESIDING MEMBER LAURIE: The Committee
7 sought to accommodate the public by making the
8 hours into the evening hours. And that's why
9 we're going to be here till 1:00 in the morning.
10 So, I'd urge you to get on with your questions.

11 MR. WILLIAMS: Thank you, sir.

12 CROSS-EXAMINATION

13 BY MR. WILLIAMS:

14 Q My first condition relates to the
15 workshops. Do you recall any discussion on the
16 effect of droughts and the condition of compliance
17 related to cutbacks on water during periods of
18 drought?

19 MS. WHITE: I recall some brief
20 discussion.

21 MR. WILLIAMS: Okay. Do you believe
22 that under the usual terms and conditions in water
23 agreements that if there is a drought or water
24 shortage that they supplier can cut back the power
25 plant in proportion to the cutbacks to the public?

1 MS. WHITE: It was my understanding
2 based on comments from the potential purveyors
3 that that is within their right.

4 MR. WILLIAMS: Mine, as well, so if
5 there is --

6 PRESIDING MEMBER LAURIE: Ms. White, you
7 moved away from the microphone, would you --

8 MS. WHITE: Sorry. It is my
9 understanding that they have that authority and
10 can build that into an agreement.

11 MR. WILLIAMS: So that is a reason you
12 don't have a C of C in that area, then?

13 MS. WHITE: Right.

14 MR. WILLIAMS: Thank you. Next, a
15 different area. What would be, in your opinion,
16 the worst effect of erosion or sedimentation at
17 this particular plant site? What does your
18 testimony say with respect to that hazards of
19 erosion and sedimentation?

20 MS. WHITE: It certainly could affect
21 water quality and the area of concern that we had
22 was primarily Fisher Creek.

23 MR. WILLIAMS: Yes. Are there any
24 species in Fisher Creek that are particularly
25 affected by the sedimentation?

1 MS. WHITE: I'm not a biologist, and I
2 can't speak to that. We were just mostly
3 generally concerned with the water quality and
4 specific impacts on species was Ms. Spiegel's --

5 MR. WILLIAMS: Yes. Third area relates
6 to the salinity. Do you recall the question I
7 asked Mr. Richardson regarding what was the
8 adverse affect of salinity on the soil?

9 MS. WHITE: I recall it.

10 MR. WILLIAMS: Yes. Do you have an
11 opinion, in your opinion what is the adverse
12 effect of salinity on the soil in this area?

13 MS. WHITE: My concern related to the
14 impact of salinity increases to the recycled water
15 product was more in terms of overall impact to
16 soil, and thus affecting landscape yields or crop
17 yields, or things like that.

18 MR. WILLIAMS: What is the effect of
19 salinity in soil? Is it -- what causes the
20 adverse affect of salinity?

21 MR. O'HAGAN: Additional salinity added
22 to the soil can cause deflocculation, and you
23 basically develop a compacted soil that plant
24 roots and water and air couldn't get through. So,
25 you'd, you know, stifle plant growth.

1 MR. WILLIAMS: So your answer is
2 different than Mr. Richardson's?

3 MR. O'HAGAN: Well, I'm talking
4 hypothetical, and I don't recall -- I'm speaking
5 hypothetical in terms of just in general what
6 salinity can do to soils. I don't recall exactly
7 what his response was.

8 MR. WILLIAMS: Thank you. I want to
9 shift to the policy arena for a moment. Ms.
10 White, do you believe it's possible for two
11 government agencies to have a different opinion in
12 the policy arena and both be correct?

13 MS. WILLIS: Objection. That's outside
14 the scope of her testimony.

15 PRESIDING MEMBER LAURIE: Sustained.

16 MR. WILLIAMS: Thank you. Let me direct
17 your attention to table 6 on page 534. This
18 compares the qualitative environmental impacts of
19 different cooling modes.

20 In particular, it contrasts the visual
21 impacts of the plume and shows that dry cooling
22 has no plume and wet cooling has a visible plume.
23 And wet/dry cooling has an intermediate effect.
24 That is the next to the last line in the table.
25 Is that your testimony?

1 MS. WHITE: Yes.

2 MR. WILLIAMS: Thank you. Is it
3 possible that one agency then, in order to
4 mitigate the effect of the plume, and the other
5 adverse environmental impacts of plumes such as
6 humidity, might choose, as a matter of policy, to
7 deny the water for a wet cooling tower.

8 Would that be an appropriate policy
9 decision to prevent the adverse impacts of plumes?

10 MS. WHITE: I think I need at this point
11 to clarify what this portion of my testimony
12 presented.

13 MR. WILLIAMS: Sure.

14 MS. WHITE: The point being made in this
15 portion of the testimony is that for various
16 technologies there are sets of impacts. What we
17 look at in terms of comparing wet, wet/dry, and
18 dry are what these relative impacts are for
19 comparison purposes. Not that we're making a
20 policy decision about whether or not the tradeoffs
21 or the impacts, themselves, are better than
22 anything else.

23 But that this is an illustrative table
24 showing that each technology has benefits and
25 detriments.

1 MR. WILLIAMS: Yes, I do understand
2 that. Thank you. How does the Commission Staff
3 make a tradeoff when there is an adverse impact
4 that comes with a favorable impact?

5 Arguably in the policy arena here we
6 have the beneficial effects of recycled water, but
7 the adverse effect of the visible plume from the
8 cooling tower.

9 How would the Commission make a finding
10 as to which was better?

11 MS. WILLIS: I'm going to object. She
12 can't answer how the Commission would make that
13 finding.

14 MR. WILLIAMS: Forgive me. How would
15 you, as a member of the staff, decide whether it
16 was better to have a visible plume or a wet
17 cooling tower?

18 MS. WHITE: I would not. I would just
19 make a recommendation based on the impacts that I
20 see in my technical area. It is beyond the scope
21 of my abilities to determine whether or not
22 another technical area's impacts are lesser or
23 greater than mine.

24 MR. WILLIAMS: Well, hypothetically, in
25 the override arena, this is a classic case. If we

1 choose to override to provide water for a wet
2 cooling tower, we arguably exacerbate the visible
3 effect of the plume, the impacts on spotted
4 butterflies --

5 MS. WILLIS: I'm going to object --

6 MR. WILLIAMS: -- the humidity --

7 MS. WILLIS: -- to this line of
8 questioning.

9 PRESIDING MEMBER LAURIE: Sustained.
10 That goes into our criteria. We will get to that
11 later.

12 MR. WILLIAMS: I thought -- you've
13 allowed many other people, sir, to --

14 PRESIDING MEMBER LAURIE: No, I --

15 MR. WILLIAMS: -- ask hypothetical
16 questions --

17 PRESIDING MEMBER LAURIE: No, I did not.
18 Go ahead and if you have a hypothetical on an
19 override, say, assume override, and then get your
20 question.

21 MR. WILLIAMS: Okay, I tried to say
22 that. Let me say it again.

23 Assuming override, how would you judge
24 whether it was better to have a visible plume or a
25 wet cooling tower?

1 MS. WILLIS: I want to object again.
2 She cannot answer that question. That's not in
3 the scope of her testimony.

4 MR. WILLIAMS: Okay, let me just clarify
5 where that issue will be addressed. I assume it
6 would be addressed under alternatives, is that
7 correct?

8 HEARING OFFICER VALKOSKY: For Ms.
9 White, is visible plume within the scope of your
10 testimony?

11 MS. WHITE: No.

12 HEARING OFFICER VALKOSKY: Thank you.

13 MR. WILLIAMS: Just for clarification,
14 visible plume is mentioned in table 6 of your
15 testimony, is that correct?

16 MS. WHITE: Yes, for illustrative
17 purposes only.

18 MR. WILLIAMS: Okay.

19 HEARING OFFICER VALKOSKY: As dry
20 cooling. I suggest, Mr. Williams, and it's only
21 my suggestion, but if you're dealing with
22 visibility impacts you may want to address it in
23 visual resources, which is a topic which we have
24 scheduled for hearings.

25 MR. WILLIAMS: Well, I understand that.

1 The general question again is the policy question,
2 sir. I'm trying to explore how the staff, in this
3 case the water staff, would decide that it was
4 appropriate to make an override to supply water
5 and thereby exacerbate the visual --

6 HEARING OFFICER VALKOSKY: The staff is
7 not the party that would make an override
8 determination. That is, under the law, reserved
9 to the Commission. The staff may make a
10 recommendation only.

11 MR. WILLIAMS: Forgive me. Let me
12 change, rephrase it to recommendation. How would
13 you propose to make a recommendation that provided
14 cooling, but at the risk of increasing the adverse
15 impact of visible plumes, humidity, fog, impact on
16 the spotted butterfly?

17 MS. WHITE: Those were not necessarily
18 my considerations. The only time I would make a
19 recommendation to a dry cooling is if this
20 particular water supply did not exist, or was
21 inadequate.

22 MR. WILLIAMS: Well, let me clarify. Is
23 it your testimony that at present the contracts
24 for water supply are uncertain, and one way to
25 mitigate that on the part of the applicant would

1 be to go to a dry cooling system, a zero release
2 system?

3 MS. WHITE: I present four discussions
4 on the waste discharge, two options that they have
5 to address that. Dry cooling is included in that
6 zero discharge.

7 In terms of how to resolve the question
8 of the supply certainty, there is a recommendation
9 on our part that we have made this evening not to
10 go to dry cooling, but to require that agreements,
11 interconnection agreements, be provided by a
12 certain period of time.

13 MR. WILLIAMS: Thank you. That does
14 clarify then either dry cooling, a commitment to
15 dry cooling, or agreements would be an appropriate
16 condition of certification. You should not wait
17 until construction then, but you should require
18 that as a --

19 HEARING OFFICER VALKOSKY: Mr. --

20 MR. WILLIAMS: -- in order that the --

21 HEARING OFFICER VALKOSKY: Mr. Williams,
22 you're testifying. Ask questions only, please.

23 MR. WILLIAMS: Forgive me, I'm just
24 trying to show the direction of my question.

25 HEARING OFFICER VALKOSKY: Just ask the

1 question. You don't need to telegraph it.

2 MR. WILLIAMS: Ms. White or Mr. -- is it
3 O'Hara?

4 MR. O'HAGAN: O'Hagan.

5 MR. WILLIAMS: O'Hagan, thank you, sir.
6 Have either of you participated in any hearings,
7 public meetings on the siting of the linear
8 facilities?

9 MS. WILLIS: Could you clarify what
10 public meetings you're referring to?

11 MR. WILLIAMS: I'm referring to meetings
12 other than workshops to explain to the citizens of
13 the community the routing and impacts of the water
14 pipeline.

15 MR. O'HAGAN: No, I have not.

16 MS. WHITE: Are you talking about
17 outside the Commission's?

18 MR. WILLIAMS: Yes, outside of
19 workshops.

20 MS. WHITE: Or outside of Commission --

21 HEARING OFFICER VALKOSKY: Outside of
22 any Commission-sponsored events?

23 MR. WILLIAMS: Yes.

24 MS. WHITE: Not outside of any
25 Commission-sponsored events, no.

1 MR. WILLIAMS: Well, let me -- could you
2 tell me what events you have participated in that
3 would convey that information to the community?

4 MS. WHITE: We have held several
5 meetings and workshops in this proceeding. We're
6 presently in the middle of a hearing on these very
7 topics, which have been publicly noticed.

8 So there are quite a few Commission
9 events that have and are taking place.

10 MR. WILLIAMS: Thank you. Earlier you
11 testified about interconnection agreements. Could
12 you clarify the difference between an
13 interconnection agreement and a contract for
14 supply? What's the nuance that people are
15 quibbling over there?

16 MS. WHITE: I'm not trying to quibble
17 over the difference. I refer to the terminology
18 used in Mr. Shipes' testimony in which he
19 referenced interconnection agreements. Those are
20 actually what I feel would be a good trigger.
21 They are, in essence, a contract.

22 MR. WILLIAMS: Is there any difference
23 except semantics?

24 MS. WHITE: Not to my knowledge.

25 MR. WILLIAMS: Thank you. Let me

1 clarify your testimony on wastewater treatment.

2 Why did you indicate that you would rather have an
3 industrial discharge permit than -- do you recall
4 that you testified that you would prefer that the
5 applicant provide an industrial discharge permit?

6 Is my note correct here?

7 MS. WHITE: Well, they have to do that
8 anyway, but the determination on what methods
9 would be used to address the salinity impact could
10 appropriately be contained, and would
11 appropriately be contained in that permit.

12 Because the City has not yet decided on
13 what is the most effective and efficient way to
14 address this project, and other projects' impact
15 on the recycled water product salinity.

16 MR. WILLIAMS: Thank you. Now, could
17 the applicant, in your opinion, become independent
18 of the City with respect to that discharge permit
19 if he elected to process, demineralize his
20 effluent? That is to go to a zero discharge
21 facility.

22 MS. WHITE: It's my understanding if he
23 went zero discharge he wouldn't need such a
24 permit.

25 MR. WILLIAMS: Would that entail then a

1 change to what's commonly referred to as dry
2 cooling?

3 MS. WHITE: No.

4 MR. WILLIAMS: How would he accomplish
5 it without dry cooling?

6 MS. WHITE: Zero discharge system is a
7 different type of technology. It can be done with
8 a wet cooling system. It doesn't have to be done
9 with dry cooling.

10 MR. WILLIAMS: He would haul away the
11 effluent as an additional waste stream then?

12 MS. WHITE: It would become a solid
13 waste stream.

14 MR. WILLIAMS: It would be a solid waste
15 stream of demineralized, resins and pollutants
16 from the cooling tower, is that correct?

17 MS. WHITE: Wastes from the cooling
18 tower. You'd have to determine what the nature of
19 those wastes are.

20 MR. WILLIAMS: Is there any analysis of
21 those wastes in the FSA?

22 MS. WHITE: No.

23 MR. WILLIAMS: I wanted to probe a
24 little bit on the issue of unfair surprise.

25 HEARING OFFICER VALKOSKY: Okay,

1 Mr. Williams, that's not something that's within
2 the scope of the witness' testimony. We had an
3 exchange between Mr. Ellison and Ms. Willis, the
4 staff counsel for staff.

5 That issue to be determined, if at all
6 tonight, will be determined by the Committee upon
7 hearing whether or not Mr. Ellison has a motion at
8 the conclusion of the staff presentation.

9 So, --

10 MR. WILLIAMS: Then I would --

11 HEARING OFFICER VALKOSKY: -- what I'm
12 saying is don't go there.

13 MR. WILLIAMS: I'd be able to comment on
14 it at that time?

15 HEARING OFFICER VALKOSKY: I am not
16 giving any guarantees. I have to hear what Mr.
17 Ellison has to say.

18 MR. WILLIAMS: Thank you.

19 HEARING OFFICER VALKOSKY: But that's
20 within Committee discretion.

21 MR. WILLIAMS: Let me pursue the matter
22 of the lack of water for a four-hour supply. What
23 was the basis -- it appears, is it your testimony
24 that you've chosen a two-hour supply for
25 firefighting, rather than a four-hour supply?

1 MS. WHITE: I didn't choose it. The
2 applicant proposed it with a connection that can
3 provide 4500 gpm.

4 MR. WILLIAMS: Yes, I do recall that.
5 And what was your basis for concluding that that
6 was adequate even though it was not in agreement
7 with the local ordinances?

8 MS. WHITE: I had contacted the fire
9 department to determine if there was any other
10 additional agreements for storage that would be
11 required. They had indicated that from a water
12 supply standpoint that may be adequate. We don't
13 have a final read from the City Manager's Office
14 or City Council as to whether or not that would be
15 adequate.

16 MR. WILLIAMS: How would that adequacy
17 be assessed, in your opinion?

18 MS. WHITE: Essentially I did what I
19 could to assess it with the context that I have
20 mentioned.

21 MR. WILLIAMS: Well, does it have to do
22 with the amount of flammable material, or the
23 proximity of other buildings?

24 MS. WHITE: That's more of a question of
25 fire protection. Mine dealt mostly with supply

1 and what that supply to serve that emergency fire
2 need would entail in terms of the overall supply
3 for the project.

4 MR. WILLIAMS: Okay. I didn't --

5 MS. WHITE: I'm not saying whether or
6 not it meets all the City requirements or not.
7 I'm just trying to figure out how much they would
8 need.

9 MR. WILLIAMS: I didn't clearly
10 understand your reference to 7558; is it some
11 policy in the water code, and then the water code
12 13550. Could you explain in more detail what
13 those are?

14 MS. WHITE: The State Water Resources
15 Control Board policy 7558 lays out the priority
16 for alternatives to the use of potable water for
17 cooling purposes.

18 And I've listed them in the testimony.
19 The use of recycled water is consistent with that
20 highest priority for an alternative to the use of
21 potable water for these purposes.

22 Water code 13550 references the use of
23 recycled water when available for industrial
24 purposes such as power plants.

25 MR. WILLIAMS: Now, do you believe that

1 this is an industrial facility?

2 MS. WHITE: Yes.

3 MR. WILLIAMS: Okay. Do you believe the
4 water code 13550 requires the use of recycled
5 sewage, even though the available source is ten
6 miles away?

7 MS. WHITE: That could be considered
8 available, yes.

9 MR. WILLIAMS: What would be the limit
10 of availability, and how --

11 MS. WILLIS: I'm going to object.

12 HEARING OFFICER VALKOSKY: Sustained.

13 MR. WILLIAMS: On the basis that -- can
14 I inquire what mileage is an appropriate limit
15 before it would be deemed a lack of available
16 water?

17 MS. WHITE: I'm not aware of any such
18 limit.

19 MR. WILLIAMS: I see.

20 HEARING OFFICER VALKOSKY: How much
21 more, Mr. Williams?

22 MR. WILLIAMS: It looks like I have
23 about three more pages of notes, sir. I'm trying
24 to go as fast as I can. The lateness of the hour
25 is slowing me down a bit. I apologize.

1 I got up at 5:00 a.m. this morning --

2 HEARING OFFICER VALKOSKY: Okay, Mr.

3 Williams, you know, with all due respect I'm not
4 really interested in that. I'm interested in
5 getting through this.

6 MR. WILLIAMS: Yes, sir, I'm moving as
7 quickly as I can.

8 HEARING OFFICER VALKOSKY: Please make
9 an attempt not to be duplicative of stuff that's
10 been asked and answered, also.

11 MR. WILLIAMS: Well, I don't think it
12 was clear what that reference was to, but thank
13 you. My notes are too cryptic here.

14 Do you have an opinion whether the
15 applicant is a retail customer or a responsible
16 constructor? Is the FSA, as you have evaluated
17 it, treating the applicant as a retail customer
18 for an available water service, or a responsible
19 constructor of the linear facility?

20 MS. WHITE: As I read the AFC, they were
21 proposing to construct a South Bay Water Recycling
22 line, and also to construct proposed wells.

23 MR. WILLIAMS: I agree. In your opinion
24 does the action of the City Council change and
25 perhaps render moot any letters and agreements and

1 understandings that were sent to the Commission
2 before November 28th?

3 PRESIDING MEMBER LAURIE: The question
4 has been asked and answered in the affirmative.

5 MR. WILLIAMS: Thank you, sir. So then
6 the communications on water and water supply
7 before November 28th of 2000 are inoperative?

8 MS. WILLIS: I'm going to object to the
9 vagueness. I'm not sure what you're referring to
10 as communications.

11 HEARING OFFICER VALKOSKY: Sustained.

12 MR. WILLIAMS: I'm talking about all the
13 letters --

14 MR. HARRIS: Mr. Williams, I'm frankly
15 concerned about the relevancy of the line of
16 questioning. I believe when Ms. White and Mr.
17 O'Hagan took the stand they explained that the
18 reason for their changes in conditions was
19 essentially in reaction to the testimony offered
20 by the City and filed on January 11th.

21 MR. WILLIAMS: Yes, but we did hear the
22 applicant refer again and again to previous
23 conversations with the City and with the City
24 water department as if they were still operative.
25 So I was trying to understand the staff's opinion

1 with respect to the submittals that were made
2 prior to --

3 HEARING OFFICER VALKOSKY: Okay, ask it
4 once and then move on.

5 MR. WILLIAMS: Yes. So, is it your
6 testimony that the submittals from the City with
7 respect to recycled water that were made prior to
8 January 8th have been superseded?

9 MS. WHITE: By the City's testimony,
10 yes.

11 MR. WILLIAMS: Yes. Thank you. Thank
12 you, I apologize for taking so long.

13 HEARING OFFICER VALKOSKY: Thank you,
14 Mr. Williams. Redirect?

15 MS. WILLIS: None.

16 HEARING OFFICER VALKOSKY: Okay,
17 therefore there's no need for recross.

18 Okay, we'd like to thank and excuse the
19 witnesses at this time.

20 MR. HARRIS: Mr. Valkosky, I've been
21 made aware that there's at least one party who'd
22 like to do some public comment, not testimony,
23 from I think the Santa Clara Valley Water
24 District.

25 HEARING OFFICER VALKOSKY: Okay, before

1 I get there, Mr. Ellison, part of the
2 understanding was that after the conclusion of
3 staff witnesses' presentation you may or may not
4 have a motion for Committee consideration?

5 MR. ELLISON: Thank you, Mr. Valkosky.
6 What I had understood our earlier exchange to be
7 would be that after an appropriate time to consult
8 with my client, which I've not yet had the
9 opportunity to do, and perhaps an opportunity to
10 discuss with the staff their actual proposed
11 language, that we reserve our right to come back
12 to the Commission with additional testimony, and
13 perhaps recall these witnesses if we choose to do
14 so.

15 HEARING OFFICER VALKOSKY: That was --

16 MR. ELLISON: That's the
17 understanding --

18 HEARING OFFICER VALKOSKY: That was
19 certainly one of the options that we discussed.

20 MR. ELLISON: I would request that
21 option. And then we will advise the Committee
22 after consultation with my client and perhaps
23 discussions with the staff, how we want to
24 proceed.

25 PRESIDING MEMBER LAURIE: Mr. Valkosky,

1 I want to leave the option of the Committee
2 allowing additional testimony, but in writing,
3 depending on the circumstances.

4 I may want to allow additional testimony
5 in writing without the necessity of a personal
6 appearance by a witness.

7 So, you'll have that opportunity, but
8 depending on the circumstances under which
9 additional testimony may be requested, because we
10 haven't set a particular time period, we may
11 request the testimony be provided in writing with
12 opportunity for rebuttal.

13 MR. ELLISON: We understand.

14 HEARING OFFICER VALKOSKY: Okay, Mr.
15 Ellison, is there a time certain by which you
16 would have consulted with your client and know how
17 you're going to request to proceed?

18 Let me say, is by the end of the month
19 sufficient time or not?

20 MR. ELLISON: I think that's sufficient
21 time. That's fine.

22 HEARING OFFICER VALKOSKY: Okay, so all
23 right, let's say let the Committee know by
24 February 1st. Seems to be a good date.

25 MR. ELLISON: That's fine, thank you.

1 HEARING OFFICER VALKOSKY: Okay.

2 MS. CORD: Mr. Valkosky, I have a
3 question about the agreement that I guess has just
4 been made. In what form will the intervenors be
5 able to respond to any such correspondence
6 between --

7 HEARING OFFICER VALKOSKY: The
8 correspondence will simply be a motion or a
9 communication on behalf of applicant. You know,
10 the intervenors' rights haven't been prejudiced in
11 any way. The intervenors have had full
12 opportunity to examine the witnesses.

13 Applicant has indicated its surprise,
14 which has been confirmed by staff that this was
15 all a happening event, so it is really only
16 applicant's rights that are in peril at this time.

17 MS. CORD: So basically if applicant
18 brings up subjects that we would wish to respond
19 to, will there be an opportunity for us to do
20 that?

21 HEARING OFFICER VALKOSKY: If there is
22 further evidentiary exchanges on this, you will
23 have an opportunity to respond to that. We're not
24 at that stage because applicant is, as of tonight,
25 unsure of which course it wishes to pursue.

1 MS. CORD: Thank you for clarifying
2 that.

3 HEARING OFFICER VALKOSKY: Okay.

4 MS. WILLIS: And, Mr. Valkosky, another
5 point of clarification. Does that mean that the
6 area of water and soil would remain open, but only
7 for this area of changes, proposed changes in
8 soils-1 and 6?

9 HEARING OFFICER VALKOSKY: You can look
10 at it that way, or you can look at it as closed,
11 subject to reopening.

12 MS. WILLIS: Okay.

13 PRESIDING MEMBER LAURIE: Mr. Valkosky,
14 before we proceed, Mr. Recorder, how are you
15 doing?

16 THE REPORTER: Just fine.

17 PRESIDING MEMBER LAURIE: Okay, let us
18 know if you need to take a break, okay?

19 Mr. Valkosky.

20 HEARING OFFICER VALKOSKY: Okay, we've
21 got two pending matters. One, you have indicated,
22 I believe, the Santa Clara Water District wants to
23 offer public comment. Okay.

24 But, two, we do have the issue of
25 noticing that Mr. Richins was going to address.

1 Mr. Richins.

2 And I guess all I'm suggesting, since,
3 Mr. Harris, Mr. Richins is part of staff, and
4 staff is concluding their case, it may be better
5 to hear from Mr. Richins at this point, and then
6 we'll take the comment. Mr. Richins.

7 MR. RICHINS: What's the question?

8 HEARING OFFICER VALKOSKY: Okay, I'm not
9 sure that there is one question, but there is
10 certainly interest on the part of several of the
11 intervenors concerning the noticing procedures
12 insofar as the reclaimed water pipeline are
13 concerned.

14 And Ms. Willis indicated that you would
15 be the appropriate one to address that. If you
16 could just give us your narrative.

17 MR. RICHINS: Yes. Our list contains
18 approximately 3000 names. Our noticing
19 requirements are that we -- well, first of all, we
20 take the project description that's contained in
21 the AFC. In this case it was the power plant plus
22 the lineals, the pipeline, a transmission line and
23 water line.

24 Those were all in all our notices. We
25 indicated that the notice includes both the power

1 plant and all lineals. And the notice goes out in
2 that manner.

3 This has been explained several times at
4 workshops from the beginning on, that what we were
5 analyzing was the project including all of the
6 lineal lines.

7 HEARING OFFICER VALKOSKY: Okay, and
8 that notice, in fact, did go out by staff?

9 MR. RICHINS: Yes, sir.

10 HEARING OFFICER VALKOSKY: Thank you.
11 Any further quick questions on this? And, again,
12 this is not cross-examination. You can have one
13 or two questions to clarify points that I may not
14 have covered.

15 MR. SCHOLZ: Well, as Mr. Richins just
16 testified or clarified, however you want to
17 classify it, for the record the routing changed
18 from the original AFC, so his answer did not
19 address when the route changed to my
20 understanding.

21 MR. RICHINS: Okay, yes, it's my
22 understanding that in supplement A, B and C there
23 were changes. Those changes were reflected in our
24 mailing list so that the new route was included.
25 And I believe all the names of the old route

1 continue to be on our list. So our list is
2 probably bigger than it needs to be. So we
3 probably notified more people than really
4 necessary.

5 So what I'm saying is we didn't remove
6 names, we just added.

7 MR. SCHOLZ: Do you know how many people
8 along the route, or what criteria you used to
9 notify them? Within a certain distance of the
10 route?

11 MR. RICHINS: Yeah, I think our
12 regulations, our data adequacy regulations
13 specified 500 feet on both sides of the lineal
14 lines, and 1000 feet from the power plant.

15 MR. SCHOLZ: And what I ultimately would
16 like to know is when you notified these people,
17 were you just notifying them to the project in
18 Coyote Valley, or did you notify them that they
19 were people impacted by the lineal routing?

20 MR. RICHINS: Yeah, as I explained our
21 notices, and I don't have one here to show you,
22 but the notices that we do send out indicate that
23 it's a 600 megawatt power plant including water
24 lines, transmission lines, gas lines and so forth.

25 MR. SCHOLZ: Does it identify why

1 they're being notified of a Coyote Valley project?
2 That's all I'm trying to establish. Do these
3 people understand, these thousands of people, do
4 they --

5 MR. RICHINS: I don't know --

6 PRESIDING MEMBER LAURIE: Mr. -- hold
7 it, Mr. Richins. That's all speculative. He
8 doesn't know whether they understand or not. If
9 you want to get a copy of the notice, get a copy
10 of the notice. If you want to speak to Mr.
11 Richins further off line, then do that.

12 The basic questions have been answered.
13 And the Committee's not going to extend any more
14 time during this hearing to respond to noticing
15 questions.

16 And, thank you, Mr. Richins.

17 MR. WILLIAMS: Just one more point of
18 clarification?

19 PRESIDING MEMBER LAURIE: Yes, sir.

20 MR. WILLIAMS: Where is the description
21 of how the routing was selected and presented.
22 What is the justification for selecting the
23 present route as opposed to the other three
24 alternatives? Is that part of the testimony that
25 we've just been through?

1 PRESIDING MEMBER LAURIE: Go ahead and
2 ask him off line. Mr. Richins is not testifying
3 here.

4 HEARING OFFICER VALKOSKY: Just for your
5 information, in whichever supplement, supplement A
6 or C, I believe, that applicant submitted months
7 ago, establishing the route under consideration, I
8 imagine that would contain a full discussion of
9 it.

10 And that's been in the record for
11 months. And with that I think I'd like to leave
12 this.

13 Comments. I'm sorry, the Water
14 District. We still have the City's witness, too.
15 Let's not forget that.

16 Sir, if you could identify yourself for
17 the record, please.

18 MR. WHITMAN: My name is Keith Whitman,
19 W-h-i-t-m-a-n. I'm the Deputy Operating Officer
20 for Water Supply Management at the Santa Clara
21 Valley Water District. Do you want my
22 qualifications, also?

23 PRESIDING MEMBER LAURIE: No, sir.

24 MR. WHITMAN: You asked earlier if we
25 wanted to make any comments, and I declined at

1 that point. But from that point until now a
2 number of things have been said, and some
3 questions asked, that I thought it might be
4 helpful to make some points of clarification from
5 the standpoint of the Santa Clara Valley Water
6 District.

7 I want to preface my remarks and say,
8 first of all, that the District is the Countywide
9 water management agency in Santa Clara County.
10 Also the District Staff and the District Board of
11 Directors have not taken any formal position on
12 this project. We are neither an intervenor nor an
13 advocate for the project. But there are some
14 clarifying points that may be helpful.

15 If the Energy Commission approves and
16 certifies the proposed plant, the District would
17 like to see recycled water used for cooling
18 purposes. There's been a lot of discussion about
19 that, and I thought for the record, to make it
20 clear that that is what our interest is, to see
21 recycled water used for cooling purposes.

22 I mentioned that while the District
23 Board of Directors has not taken a position on the
24 plant, per se, our Board does have a policy that
25 they've adopted which supports expanding the use

1 of recycled water in Santa Clara County.

2 In particular, they want to see recycled
3 water used in those instances such as cooling
4 where it can be used in place of potable water
5 supply.

6 Also, there were some comments made to
7 what sort of relationship there is between South
8 Bay Water Recycling and Santa Clara Valley Water
9 District. I wanted to clarify that there is an
10 agreement between the District and South Bay Water
11 Recycling in which Santa Clara Valley Water
12 District reimburses South Bay Water Recycling at a
13 rate of \$115 per acrefoot for recycled water that
14 is actually delivered.

15 So the District has both an interest in
16 the future of South Bay Recycling from a public
17 policy and good water management standpoint, as
18 well as a financial stake in the project.

19 One other point I wanted to add, just in
20 the area of wholesaler/retailer relationships and
21 how that works, is that the District will
22 generally defer to the water retailer in those
23 areas where there is an established service area
24 by a water retailer.

25 However, in some instances where there

1 is not an established retailer, the District does
2 and has provided water service to individual
3 customers.

4 Now that's a point where there's been a
5 lot of discussion back and forth. I just wanted
6 to make that point clear, as well.

7 And, again, we are primarily a
8 wholesaler, but we do provide service to some
9 individuals, and if the plant is certified and
10 approved by the CEC, it would be our interest and
11 desire to help make that happen and see that
12 recycled water is provided for cooling purposes at
13 the plant.

14 That's the extent of my comments.

15 PRESIDING MEMBER LAURIE: Thank you,
16 sir. We appreciate your patience, very much
17 appreciate your comments. Thank you.

18 And, Ms. Dent.

19 MS. DENT: For my witness?

20 PRESIDING MEMBER LAURIE: Yes.

21 MR. AJLOUNY: May I suggest a five-
22 minute break?

23 PRESIDING MEMBER LAURIE: Yes. We'll
24 break for five minutes.

25 (Brief recess.)

1 PRESIDING MEMBER LAURIE: Swear the
2 witness, please.

3 Whereupon,

4 RANDOLPH SHIPES
5 was called as a witness herein, and after first
6 having been duly sworn, was examined and testified
7 as follows:

8 PRESIDING MEMBER LAURIE: Ms. Dent.

9 MS. DENT: Thank you.

10 DIRECT EXAMINATION

11 BY MS. DENT:

12 Q Mr. Shipes, will you state your full
13 name for the record and your business address.

14 A My name is Randolph, R-a-n-d-o-l-p-h,
15 Shipes, S-h-i-p-e-s. And my business address is
16 the City of San Jose, 4245 Zanker Road, San Jose,
17 California.

18 Q And what is your position with the City
19 of San Jose?

20 A I'm a Deputy Director of the
21 Environmental Services Department in charge of
22 watershed.

23 Q And among your responsibilities does
24 that include management and supervision of both
25 the industrial pretreatment program at the water

1 pollution control plant, and the South Bay Water
2 Recycling program?

3 A It does.

4 Q And those are separate divisions of the
5 Department of Environmental Services, is that
6 right?

7 A That's correct.

8 Q And you supervise both of those?

9 A That's correct.

10 Q Now, can you describe just briefly for
11 the Commission what the San Jose/Santa Clara water
12 pollution control plant is? What the jurisdiction
13 served by the San Jose/Santa Clara water pollution
14 plant is.

15 A The San Jose/Santa Clara water pollution
16 control plant is a joint agency that's owned by
17 the Cities of San Jose and Santa Clara, with
18 tributary agencies that have bought in for
19 delivery of services from the San Jose/Santa Clara
20 water pollution control plant.

21 The plant covers a service area of about
22 300 square miles which covers the Cities of San
23 Jose, Santa Clara, Milpitas, Monte Serro,
24 Cupertino, Los Gatos, and several sanitary
25 districts.

1 Q And does the San Jose/Santa Clara water
2 pollution control plant provide sanitary sewer
3 treatment services to all of those agencies?

4 A That's correct.

5 Q So, the jurisdiction of the plant and
6 the area under your control does not include the
7 sanitary sewer collection system for the City of
8 San Jose, does it?

9 A That's correct.

10 Q That's administered by a different
11 department of the City?

12 A That is correct.

13 Q Now, the South Bay Water Recycling
14 division of the Department of Environmental
15 Services, is that an adjunct of the San Jose/Santa
16 Clara water pollution control plant?

17 A That is correct.

18 Q And it's administered, again, by the
19 City on behalf of the joint powers agency?

20 A That is also correct.

21 Q Now, are you also familiar with the
22 facilities and services provided by the municipal
23 water service division?

24 A Yes, I am.

25 Q Of the City of San Jose?

1 A That is correct.

2 Q How long have you been employed in your
3 present capacity?

4 A A little bit over 18 months.

5 Q And are you providing comments on behalf
6 of the City on all water and wastewater issues in
7 this matter?

8 A Yes, I am.

9 Q Have you been a point of contact with
10 Commission Staff throughout the course of these
11 proceedings?

12 A Yes, I have been.

13 Q And with the applicant, too?

14 A That's correct.

15 Q And very briefly, Mr. Shipes, could you
16 summarize your testimony for the Commission?

17 A Yes, I can. The northern 10 acres of
18 the 20-acre site of the proposed Metcalf Energy
19 Center facility is located in an unincorporated
20 area of Santa Clara County.

21 The City of San Jose generally does not
22 provide city services of any type to developing
23 unincorporated areas outside the city limits.
24 Specific constraints exist with respect to the
25 provision of water and sewer service by the City

1 in unincorporated areas.

2 Accordingly, both the final staff
3 assessment dated October 2000, and the Calpine/
4 Bechtel testimony on soil and water resources are
5 incorrect in assuming that the City of San Jose
6 can or will provide water and/or sewer service to
7 the Metcalf Energy Center.

8 Moreover, even if the Metcalf Energy
9 Center were located entirely within the city
10 limits of the City of San Jose, there is no basis
11 for assuming that recycled water service will be
12 extended to the facility, even if the Metcalf
13 Energy Center were located entirely within the
14 city limits of the City of San Jose and recycled
15 water were used by the facility, wastewater
16 pretreatment, or an on-site package treatment
17 system and holding tanks may be required as a
18 condition of the acceptance of wastewater
19 discharge. Or a zero discharge may be required as
20 a condition.

21 Also there's concerns with the discharge
22 quality of the water that would be discharged to
23 the plant, and with the pipeline construction.

24 Q Now, Mr. Shipes, have you read your
25 prepared testimony that was docketed with the CEC?

1 A Yes, I have.

2 Q And was that testimony prepared by or
3 under your direction?

4 A Yes, it was.

5 Q And is that testimony true and correct,
6 with the exception of one addition that I'm going
7 to ask you to make to that testimony?

8 A Yes, it is.

9 Q Or ask you about making to that
10 testimony. Since the preparation of the
11 testimony, have you also become aware that there
12 may be an additional requirement for approval for
13 the extension of sewer service and potable water
14 service to the Metcalf Energy Center?

15 A Yes, I have.

16 Q And is that the approval of the Santa
17 Clara County Local Agency Formation Commission?

18 A Yes.

19 Q What is commonly referred to as an
20 outside service contract?

21 A Yes.

22 Q So, now, Mr. Shipes, in your testimony
23 did you attempt to describe for the Commission the
24 restrictions that you felt were based on the
25 City's provision of water and sewer service under

1 two different scenarios?

2 A Yes.

3 Q One scenario being that the property
4 would be entirely annexed into the City of San
5 Jose, and the other scenario being that the
6 property would remain as it is now, half inside
7 the City of San Jose and half in the County of
8 Santa Clara?

9 A Yes.

10 Q And now, Mr. Shipes, you've indicated
11 that you had been in previous discussions prior to
12 this testimony with Commission Staff and with the
13 applicant. And in the prior discussions that you
14 had had with Commission Staff and the applicant,
15 those discussions predated the City Council action
16 in late November?

17 A That is correct.

18 Q And those discussions had primarily
19 focused on technical issues with respect to the
20 salinity that would be in the effluent discharge
21 from Metcalf Energy Center?

22 A There was salinity, but there were other
23 discussions. But they were always given with the
24 understanding that anything that we talked about
25 would be subject to approval of the Council.

1 Q Now the South Bay Water Recycling
2 project pipeline currently is not anywhere near
3 Metcalf Energy Center?

4 A That is correct.

5 Q It's about seven to ten miles away?

6 A That is correct.

7 Q And are there any currently approved
8 plans for extension or expansion of the South Bay
9 Water Recycling system to the vicinity of Metcalf
10 Energy Center?

11 A No, there is not.

12 Q Is the South Bay Water Recycling system
13 actually under expansion right now, actually under
14 construction with pipeline extensions?

15 A No.

16 Q Do they have pipeline extensions
17 currently approved for construction?

18 A There are no extensions. There are work
19 being done in Milpitas and Santa Clara as far as
20 for system reliability and also for in-fill.

21 Q So there are some -- there is some
22 construction going on for South Bay Water
23 Recycling in Milpitas and in Santa Clara to
24 improve system reliability and for access --

25 A For in-fill.

1 Q -- to additional customers?

2 A That is correct.

3 Q So someone asked earlier, could the
4 water be supplied to Milpitas. It is, in fact,
5 supplied to Milpitas, is it not?

6 A That is correct.

7 Q And is the main service area for the
8 South Bay Water Recycling project generally
9 speaking the northern part of San Jose?

10 A Yes, it is.

11 Q So there's pipeline extending from the
12 wastewater treatment plant, which is north of
13 route 237, extending southward into San Jose, and
14 extending east and west out into Milpitas and
15 Santa Clara?

16 A That's correct.

17 Q And other than the cities that you've
18 mentioned, and the sanitation districts that
19 you've mentioned, are any other public agencies
20 involved in administering the South Bay Water
21 Recycling?

22 A No.

23 Q The Santa Clara Valley Water District is
24 not a participant in either the water pollution
25 control plant or South Bay Water Recycling, is it?

1 A No, they're not.

2 Q The testimony from the Water District
3 that they provide funding to South Bay Water
4 Recycling, that's funding for water that South Bay
5 Water Recycling sells to other retailers for
6 customers, is that right?

7 A That is correct.

8 MS. DENT: I won't ask any further
9 questions on direct. His testimony is relatively
10 short, and I'll open it up to cross. I will move
11 the testimony into evidence now, or after the
12 cross.

13 HEARING OFFICER VALKOSKY: Okay, that
14 testimony has been identified as exhibit 31. Is
15 there any objections to its admission? Seeing no
16 objections, exhibit 31 is received into evidence.

17 EXAMINATION

18 BY HEARING OFFICER VALKOSKY:

19 Q Before we go to cross, Mr. Shipes,
20 assist my understanding. On pages 2 to 3 of your
21 testimony you indicate the fact, it's your view
22 that wastewater pretreatment and four holding
23 tanks or zero discharge may be required.

24 Are you suggesting that the Commission
25 incorporate any of those measures as a condition

1 of certification?

2 A That has already been placed in as we
3 have discussed earlier, that all those conditions
4 are possible for the facility.

5 Q Okay, but that would be through a City
6 permit, is that correct?

7 A That would be through the industrial
8 wastewater discharge permit.

9 Q Okay, are you suggesting that the
10 Commission incorporate the requirements for any of
11 those measures in its conditions of certification?
12 In other words, the conditions soil and water 1
13 through 8 that staff has been discussing?

14 A Yes.

15 Q Which one?

16 A We would like to include all of them
17 because it could depend upon how we would write
18 the permit for them at that particular time.

19 If an ordinance is not in effect that
20 would allow for the use of an advanced water
21 treatment unit, or some other form, then depending
22 upon the time of issue what we would make the
23 decision of, it could require any one of the above
24 listed treatments.

25 Q Okay, so your view, the Commission

1 should incorporate those three items, and
2 essentially leave the choice up to future action?

3 A Yes.

4 Q Is that correct? Okay, thank you. On
5 page 3 of your testimony you indicate, or you deal
6 with the City's ability to supply sewer and water
7 service to areas, I believe you used the phrase,
8 lawful land use.

9 My question is assuming that the land
10 use is, in fact, lawful, what are the pertinent
11 considerations that the City would have in
12 supplying water or sewer service to an area which
13 has not been annexed, or otherwise within the
14 City's jurisdiction?

15 That's different from the zoning.

16 A Right. Any facility that's outside the
17 City service area or that's not annexed as part of
18 the City would require the approval of City
19 Council.

20 Q Okay, so is it your testimony then that
21 that essentially would be an elective action by
22 the City Council and totally within their
23 discretion?

24 A That is correct.

25 Q Thank you. Is the project site within

1 the City's urban service area, as designated in
2 the general plan?

3 A The site is in an area that I would
4 think would be, to my knowledge, in an urban
5 service area. However, it is not part of the
6 City.

7 Q Okay, so could you explain to me then
8 the significance of it being within an urban
9 service area but not within the City's boundaries?

10 A An urban service area is, the general
11 plan designates that an urban service area is
12 where services and facilities provided by the City
13 and other public agencies are generally available
14 where urban development requiring such services
15 should be located.

16 Q Okay, and the operative word is should
17 be located?

18 A Should be located.

19 Q And, again, is that, in your opinion,
20 subject to discretionary action by the City
21 Council?

22 MS. DENT: I'd like to object on the
23 grounds that this witness is not our land use
24 witness.

25 HEARING OFFICER VALKOSKY: I understand

1 that, and if the witness cannot answer it, he's
2 free to so state.

3 MS. DENT: Thank you.

4 MR. SHIPES: I'm not qualified to answer
5 that question.

6 HEARING OFFICER VALKOSKY: That's fine.
7 That's all I wanted to know. Thank you.

8 Cross by applicant?

9 MR. ELLISON: Thank you, Mr. Valkosky.

10 CROSS-EXAMINATION

11 BY MR. ELLISON:

12 Q Mr. Shipes, my name is Chris Ellison.
13 I'm representing Calpine/Bechtel in this
14 proceeding. Can you hear me?

15 A Yes, I can.

16 Q If for some reason you don't understand
17 a question or you can't hear me, just let me know,
18 and I'll rephrase it.

19 My first question is you are familiar --
20 we've heard some testimony this afternoon and this
21 evening with respect to State Water Resources
22 Control Board policy 7558. Are you familiar with
23 that policy?

24 A The specific policy, no.

25 Q And are you familiar with state water

1 code section 13550 and 13551?

2 A No.

3 Q Would you -- I'd like you to accept for
4 the moment as a hypothetical my statement that
5 both of those, both policy 7558 and state water
6 code section 13550 and '551 require the use of
7 recycled water where it's available for a project
8 such as the Metcalf Energy Center.

9 Do you have that hypothetical in mind?

10 A I have the hypothetical that recycled
11 water will be used where it is appropriate and
12 available.

13 Q Let me restate the hypothetical. The
14 hypothetical, I'd like you to assume for the sake
15 of this discussion that both policy 7558 of the
16 State Water Resources Control Board, and state
17 water code section 13550 dictate the use of
18 recycled water where available. Do you have that
19 assumption in mind?

20 A I have that in mind.

21 Q With that assumption in mind, in your
22 opinion is recycled water available to the Metcalf
23 Energy Center?

24 MR. AJLOUNY: Objection, isn't that a
25 legal question?

1 MS. DENT: I'm going to ask for a
2 clarification on whether you're asking for his
3 opinion about whether it's physically available to
4 the property, or whether or not you're asking for
5 an opinion from him on the interpretation of the
6 sections you've just cited.

7 MR. ELLISON: I'm asking his opinion as
8 to whether recycled water is available to the
9 Metcalf Energy Center.

10 MR. SHIPES: Recycled water is available
11 ten miles away. It is not available at that
12 particular site.

13 BY MR. ELLISON:

14 Q In saying that recycled water is
15 available, do you mean that it is physically
16 available, or are you expressing an opinion as to
17 whether it is likely to be provided?

18 A I have made the statement that it is
19 physically available ten miles away.

20 Q Okay. If I were to define available as
21 meaning likely to be provided, in your opinion is
22 recycled water available to this project?

23 A Our direction from City Council, as it
24 stands today, is that we will have no further
25 expansion further than Center Road without

1 specific approval of Council.

2 Q Okay, does that mean then that if
3 available means likely to be provided, that
4 recycled water is not available to this project?

5 A Recycled water is not available to this
6 project at that location.

7 Q With respect to your testimony with
8 regard to the Great Oaks Water Company, do I
9 understand correctly the Great Oaks Water Company
10 has filed an advice letter with the Public
11 Utilities Commission to provide water service to
12 the Metcalf Energy Center location?

13 MS. DENT: I'm going to object to the
14 question on the grounds that this witness has
15 produced no testimony on Great Oaks Water Company.
16 It's not in his written testimony, and he didn't
17 testify to it here today.

18 I believe the testimony was San Jose
19 municipal water.

20 HEARING OFFICER VALKOSKY: Okay, are we
21 in agreement that it is not in his --

22 MR. ELLISON: No, we are not in
23 agreement that --

24 HEARING OFFICER VALKOSKY: -- written
25 testimony? No, on page 5 I seem to see at least a

1 minimal discussion about Great Oaks Water Company,
2 and I assume that's what Mr. Ellison is referring
3 to.

4 MS. DENT: Good, that would help if you
5 do refer to the line and page of the testimony.

6 HEARING OFFICER VALKOSKY: I agree with
7 that.

8 MS. DENT: That's why I've got these
9 little numbers on it.

10 HEARING OFFICER VALKOSKY: It is on page
11 5.

12 BY MR. ELLISON:

13 Q I'd like you to refer to page 5 of your
14 testimony, line 14, the sentence beginning on line
15 14: Great Oaks Water Company is neither an
16 authorized retailer of SBWR recycled water, nor
17 authorized by the CPUC to provide service to the
18 Metcalf Energy site." Do you see that sentence?

19 A Yes, I do.

20 Q Okay. Is it your understanding that the
21 Great Oaks Water Company has filed an advice
22 letter with the Public Utilities Commission to
23 become a water service provider at that site?

24 A I've been informed that is the case.

25 Q In your opinion is it relevant to that

1 proceeding whether there is other water available
2 at that site, for example, from the City of San
3 Jose?

4 MS. DENT: That's asking for a legal
5 conclusion on the part of the witness as to the
6 jurisdiction of the CPUC. The witness isn't
7 qualified to answer that.

8 MR. ELLISON: I'll rephrase the
9 question.

10 BY MR. ELLISON:

11 Q For the purposes of that Public
12 Utilities Commission proceeding, is it the City's
13 position that it will not serve the Metcalf Energy
14 site?

15 A Are you asking if the muni water system
16 will not provide water to the Metcalf Energy
17 Center?

18 Q For the purposes of the Public Utilities
19 Commission's decision on the Great Oaks Water
20 Company's advice letter, yes.

21 MS. DENT: It's assuming that this
22 witness knows the City's position in that matter.
23 I'd like that foundation to be established first.

24 HEARING OFFICER VALKOSKY: Okay, if the
25 witness does not know the position he is free to

1 state that he does not know the position and
2 cannot answer the question.

3 BY MR. ELLISON:

4 Q Would you expect, Mr. Shipes, for the
5 City's position to be consistent as between this
6 proceeding and the CPUC proceeding?

7 A The position of the City has been that
8 the Coyote Valley is a service area for the
9 municipal water system.

10 Q That's not the question I asked, Mr.
11 Shipes.

12 A Please restate your question.

13 Q The question was would you expect the
14 City's position to be consistent as between this
15 proceeding and the Public Utilities Commission's
16 consideration of Great Oaks' advice letter?

17 MS. DENT: I'm sorry, the question is
18 not clear to me, position on what?

19 PRESIDING MEMBER LAURIE: If the
20 objection calls for speculation I'll sustain it.

21 BY MR. ELLISON:

22 Q Mr. Shipes, I'd like you to assume that
23 the Energy Commission certifies this project. And
24 I'd like you to assume that any other permits that
25 the project needs are obtained. And that all

1 appeals of those permits are exhausted in favor of
2 the project.

3 Do you have that assumption in mind?

4 A Okay.

5 Q At that point in time if a future City
6 Council wished to provide sewer service and
7 recycled water service and potable water service
8 to the Metcalf Energy Center, could it choose to
9 do so?

10 A If the City Council so directs us, yes.

11 Q And that would be a decision to be made
12 in the future by a future City Council, is that
13 correct?

14 A The City Council can, at anytime, make
15 the decision that they would or would not provide
16 service to the area.

17 Q That decision has not been made,
18 correct?

19 A The decision of the City Council with
20 this particular point is that they have rejected
21 the planning zoning for that area. In which case,
22 by a unanimous vote of the Council, it gives us
23 indication that they would not approve service to
24 the area.

25 Q That's not the question I asked. The

1 question that I asked was with the hypothetical
2 that I gave you in mind, the City's decision to
3 provide water service, sewer service and both
4 recycled water service and potable water service,
5 and sewer service has not been made, correct?

6 MR. AJLOUNY: Objection, speculative.

7 HEARING OFFICER VALKOSKY: This is not
8 your witness.

9 MR. AJLOUNY: I'm still -- I thought I
10 could --

11 HEARING OFFICER VALKOSKY: No, this is
12 Ms. Dent's witness. She is the one that can make
13 an objection or not.

14 MR. AJLOUNY: Well, I tried.

15 PRESIDING MEMBER LAURIE: Okay, well, I
16 don't understand the question. So, rephrase.

17 MR. ELLISON: Okay, let me rephrase.

18 BY MR. ELLISON:

19 Q Do you agree with the objection that an
20 opinion regarding what the future City Council's
21 decisions would be would be speculation?

22 A Yes.

23 Q Okay. So your opinion in your testimony
24 regarding what the City Council will do in the
25 future is speculation, correct?

1 A My opinion is based upon the action that
2 Council with the unanimous vote stating that they
3 did not want to have this as part of the City
4 because it was not in conformance with the City
5 general plan.

6 Q With respect to your opinion in your
7 testimony as regarding what a future City Council
8 would do, that would be speculation, correct?

9 A I am not in a position to guess or make
10 a speculative of what our Council would say.

11 Q Without speculating as to what the
12 future City Council would say, would it be fair to
13 assume that in making such a decision the City
14 Council would consider state law?

15 A The City Council, in my opinion, would
16 always, would review state law.

17 Q And would you also agree that in such a
18 decision the City Council would likely consider
19 the findings of this Commission?

20 PRESIDING MEMBER LAURIE: If you do
21 not --

22 MS. DENT: If you --

23 MR. SHIPES: I don't know.

24 BY MR. ELLISON:

25 Q Again I want to remind you of the

1 assumption that all the permits for the project
2 have been obtained, and all appeals exhausted in
3 favor of the project. You have previously
4 testified that the project is within the urban
5 services area of the City of San Jose. Do you
6 recall that testimony?

7 A Yes.

8 Q Okay. With my hypothetical in mind, the
9 project would then be a fully permitted lawful use
10 within the urban services area, correct?

11 MS. DENT: That's calling for a legal
12 conclusion on the part of this witness. He's not
13 been qualified to testify on that.

14 PRESIDING MEMBER LAURIE: Sustained.

15 BY MR. ELLISON:

16 Q Can you give me any example of a city
17 that you know of in the history of the City of San
18 Jose of the city refusing to provide services to a
19 lawful, fully permitted use within the urban
20 services area that had no alternative means of
21 obtaining services?

22 A I'm not aware of any.

23 Q I'd like you to turn to exhibit 65. I
24 don't know if you have that with you. That's your
25 November 7th letter -- I'm sorry, your November

1 7th memo. Do you have a copy of that?

2 This was handed out this morning by the
3 applicant as part of the package of additional
4 exhibits that were entered into the record this
5 morning. It's the last of the five exhibits that
6 were provided.

7 MS. DENT: Can I look at yours, please,
8 and make sure I gave him -- I just don't know if
9 I put the right number on it.

10 MR. ELLISON: It's a two-page memo dated
11 November 7, 2000, from Mr. Shipes to Richard
12 Buikema. Do you have a copy of that in front of
13 you?

14 MR. SHIPES: Yes, I do.

15 BY MR. ELLISON:

16 Q Can you briefly describe to me what this
17 memo is and why it was prepared?

18 A Yes. This memo was prepared as we were
19 having technical discussions with Calpine on the
20 Metcalf Energy Center on uses of the recycled
21 water.

22 If, in fact, that the Metcalf Energy
23 Center were approved, that these would be some of
24 the conditions we would look at on how to impact
25 the high salinity discharge and also on the

1 selection of the water supplier.

2 Q And you prepared this memo, is that
3 correct?

4 A Yes. It was prepared under my
5 direction.

6 Q Okay. And was it prepared as part of
7 the package of materials to be considered by the
8 City in making its land use decision of November
9 28th?

10 A Yes.

11 Q And you understood at the time that you
12 supervised its preparation that it would be relied
13 upon by the City in that way?

14 A Yes.

15 Q Is it fair for me to assume then that
16 you intended to disclose to the City any important
17 issues regarding this project?

18 A Such as?

19 Q Any important issues that you felt were
20 important with respect to this project?

21 A We would.

22 Q And so is it fair for me to assume that
23 at the time this memo was prepared, in your mind,
24 it was the truth?

25 A That's correct.

1 Q Other than the City Council's decision
2 on November 28th, have there been any changes
3 since November 7th that affected this memorandum
4 and the statements therein?

5 A No.

6 Q I'd like to refer you to the first full
7 paragraph on page one, under the heading, use of
8 recycled water. And specifically the sentence:
9 Even with the estimated 0.6 mgd of wastewater
10 discharge, the project represents a significant
11 net benefit to the City's efforts to divert
12 wastewater flows from discharge to the South San
13 Francisco Bay."

14 Do you see that statement?

15 A Yes, I do.

16 Q That was your opinion on November 7th,
17 correct?

18 A Yes.

19 Q Is that your opinion today?

20 A Any customer we have that uses large
21 quantities of water is, in fact, a net benefit to
22 the City.

23 Q And this project qualifies under that
24 description?

25 A Yes.

1 Q Turning to page 2, at the very bottom of
2 the memorandum, the last paragraph, appears the
3 sentence: Upon approval of the plan development
4 rezoning and annexation of the property by City
5 Council, the muni will provide a "will serve
6 letter" to the applicant."

7 Do you see that?

8 A Yes, I do.

9 Q So is it fair for me to assume that had
10 the City Council approved the development rezoning
11 and annexation that the City would have, in your
12 opinion, provided the City services necessary to
13 the Metcalf Energy Center?

14 A Yes.

15 Q Now I'd like to refer you back to the
16 first page again, the second paragraph of the
17 section entitled, use of recycled water. The
18 next-to-last sentence referring to increases in
19 salinity, which states: Such increases may make
20 SBWR water unsuitable for some users, and more
21 difficult to market for new customers."

22 Do you see that?

23 A Yes, I do.

24 Q Can you describe for me what studies
25 provide the basis for this statement by the City?

1 A These are studies that were done through
2 the South Bay Water team with consultants, who
3 include Montgomery Watson and I think there's a
4 couple other ones that I don't remember the names
5 of at this particular point, that looked at the
6 uses of recycled water.

7 This statement is made based on the fact
8 that in future uses of the water several of the
9 customers' potential uses requires that the
10 salinity be at 500 ppm versus the 800 that it is
11 currently.

12 Q Have those studies been documented and
13 provided to Calpine/Bechtel?

14 A I don't know.

15 Q Have they been documented?

16 A I'm not aware at this time if they're
17 fully documented. I know that we have copies of
18 those documents in our files.

19 Q Well, if you have copies of the
20 documents in the files, can I assume they have
21 been documented?

22 MS. DENT: Did you understand what he
23 meant by documented?

24 MR. SHIPES: I don't think so.

25 //

1 BY MR. ELLISON:

2 Q Have the studies been written down?

3 A Yes, they have.

4 Q Were those studies specific to the
5 Metcalf Energy Center?

6 A No.

7 Q Your statement says such increases may
8 make SBWR water unsuitable for some users. Can
9 you tell me how many users?

10 A Not a specific number. Where that comes
11 into effect is even with golf courses that we
12 currently serve, the salinity is an issue that in
13 some cases they prefer not to use recycled water
14 on the greens. They will use it on the fairways,
15 but for the greens, themselves, they'll use
16 blended water, or they'll use potable water.
17 Because there is a concern from that standpoint.

18 Also, from the gardeners that use the
19 water, the concern is that star jasmine and some
20 other plants are susceptible at low salinity
21 levels.

22 Q Let me restate my question. My question
23 wasn't about whether some customer prefer recycled
24 water, or why they prefer it. My question
25 concerns specifically the Metcalf Energy Center,

1 and an increase of 3 percent in SBWR's overall
2 salinity that your memo suggests would result from
3 the Metcalf Energy Center. Do you have that in
4 mind?

5 A Yes.

6 Q Okay, with that in mind, your next
7 sentence suggests that that increase, that 3
8 percent increase may make SBWR water unsuitable
9 for some users. And my question is can you tell
10 me how many users?

11 A Not a specific number.

12 Q Can you give me a ballpark figure?

13 A Not off the top of my head.

14 Q Can you give me any measure whatsoever
15 of how many users we're talking about?

16 A It would be primarily our golf course
17 users, and it would be ones that use for
18 irrigation and parks. And those are our primary
19 customers.

20 Q So, is it your testimony today that the
21 Metcalf Energy Center would cause your golf course
22 users to no longer use SBWR water?

23 A There is a concern that they may have
24 additional difficulties in using the water.

25 Q Have you provided the studies that

1 justify that to the Energy Commission?

2 A I don't know.

3 Q Mr. Shipes, I'd like to refer you to two
4 documents that have been marked and admitted in
5 this proceeding as exhibit 63 and 64.

6 Exhibit 63 is a September 15, 2000
7 letter to Mr. Paul Richins from Calpine/Bechtel.
8 I can provide you with copies if you don't have
9 it. From Mr. Ken Abreu, an 11-page letter.

10 A Okay, I do not have a copy of that.

11 Q And exhibit 64 is a September 26, 2000
12 letter, also to Mr Richins --

13 PRESIDING MEMBER LAURIE: Is this within
14 the scope of his direct testimony, sir?

15 MR. ELLISON: Yes, these letters both
16 address the salinity issue that we were just
17 discussing.

18 MS. DENT: I'd like to ask if the
19 witness has ever seen the letters before, if he's
20 indicated as a "cc" on the letter? Assuming he's
21 going to be asked questions on a 14-page letter
22 he's never seen before.

23 MR. ELLISON: Well, that's my next
24 question, is whether he's seen the letters, so
25 that's --

1 MR. SHIPES: No, I have not.

2 BY MR. ELLISON:

3 Q You have never seen these letters
4 before?

5 A I'd have to look at it, but I don't
6 think I have.

7 Q Okay, well, let me show you these two
8 letters and see if you've seen them before.

9 A I actually have seen this one.

10 Q Why don't you give those back to me and
11 I will provide copies --

12 PRESIDING MEMBER LAURIE: Hold your
13 comments until you get in front of a recording
14 microphone, please.

15 MR. SHIPES: I believe I have seen those
16 letters.

17 MS. DENT: I want to ask counsel to
18 provide me with copies of the letters so I can
19 follow along.

20 MR. AJLOUNY: Would it be appropriate if
21 I get copies, also?

22 HEARING OFFICER VALKOSKY: Yes. I
23 believe Mr. Harris provided everybody copies
24 earlier this morning.

25 PRESIDING MEMBER LAURIE: Okay.

1 MS. DENT: Of these two letters?

2 HEARING OFFICER VALKOSKY: Mr. Harris,
3 was that not part of the package?

4 MR. HARRIS: Let me check.

5 MR. ELLISON: One of the letters was
6 part of the package, one of them was not.

7 HEARING OFFICER VALKOSKY: Okay, which
8 one was part of the package?

9 MR. ELLISON: Exhibit 63, September 15th
10 letter was part of the package.

11 HEARING OFFICER VALKOSKY: Okay.

12 MR. ELLISON: The other exhibit has been
13 previously admitted in the proceeding.

14 HEARING OFFICER VALKOSKY: Okay, we
15 identified it as exhibit 64. And I think you'd
16 better provide the other parties with a copy of
17 that letter.

18 BY MR. ELLISON:

19 Q Now, I understood your testimony, Mr.
20 Shipes, to be that you have seen both of these
21 letters previously, is that correct?

22 A September 26 definitely I have seen
23 before.

24 Q Okay, that's exhibit 64. With respect
25 to the September 15th letter, have you seen that

1 before?

2 PRESIDING MEMBER LAURIE: Sir, yes or
3 no, or you don't recall.

4 MR. SHIPES: I don't recall seeing this
5 one.

6 BY MR. ELLISON:

7 Q Okay, if I could ask you to turn to the
8 last page of that letter which has the cc's, and
9 you'll find your name there. Does that refresh
10 your recollection about whether you've seen this
11 or not?

12 A Okay, I've received a copy of it, but I
13 don't remember reading it. I assume I have.

14 Q Did you consider either or both of these
15 letters in preparing your testimony?

16 A Yes, and there was a disagreement
17 between our staff and the staff of the Metcalf
18 Energy Center.

19 Q Have you provided to the staff of the
20 Metcalf Energy Center any documentation of the
21 nature of that disagreement, or any copies of the
22 studies that underlie the City's position?

23 A They were provided with copies of
24 studies by Baum and Schieck.

25 Q When were they provided?

1 A I don't remember the date.

2 Q And it's your position that those are
3 the studies that you're relying upon for your
4 testimony and for the disagreement that you have
5 with these letters?

6 A It's based upon the Baum and Schieck
7 studies; it was based upon my staff, their
8 recommendations. And we have a person who
9 specialized in dealing with gardeners and dealing
10 with landscaping issues.

11 Q Can you give me any further details
12 about when these documents were provided, because
13 I am told the Calpine/Bechtel Staff were not
14 provided with that study?

15 A The Baum and Schieck study was at the
16 time that the discussion with, matter of fact I
17 think they reference it in one of the letters, is
18 when they had the discussions with Baum and
19 Schieck about this, it was actually a meeting that
20 happened, if I remember, it was in my facility.
21 It may or may not have been in my office at that
22 particular time.

23 Q If I can ask you to refer to exhibit 64,
24 there is an attachment entitled, follow up on
25 technical meeting with City of San Jose on

1 September 20, 2000. Do you see that?

2 A Yes, I do.

3 Q Is that the meeting you're referring to?

4 A Yes.

5 Q And is it your testimony then that
6 written copies of the Baum and Schieck study were
7 provided to the Metcalf Energy Center Staff at
8 that meeting?

9 A I don't remember exactly if the
10 documents were provided at that one, but I do know
11 that discussion was made about it, and I'm not
12 sure whether they were actually handed out at that
13 meeting or not, or shortly thereafter.

14 Q Is it fair to say then that you're not
15 sure whether the documents were ever provided to
16 Metcalf Energy Center Staff?

17 A Yes.

18 Q I want to ask you some questions about
19 your position on the requirement for pretreatment
20 at the Metcalf Energy Center site.

21 Is it correct that the City encourages
22 the use of recycled water in cooling tower
23 applications?

24 A Yes, it is.

25 Q Has the City ever required pretreatment

1 as a condition of use and return of recycled water
2 from other cooling tower applications?

3 A The City puts out an industrial
4 wastewater discharge permit that outlines what the
5 discharge limitations will be. It's up to the
6 individual user if they want to put in a
7 pretreatment system.

8 Q Can you give me an example of a cooling
9 tower application where the City has insisted upon
10 pretreatment as a condition of providing recycled
11 water?

12 A I'm not aware of one.

13 Q And that would include the Agnews Power
14 Plant of Calpine, which is using recycled water
15 for a power plant cooling tower application?

16 A I'm not familiar with that discharge
17 permit. That was given out before I was hired by
18 the City.

19 Q So you don't know about that?

20 A I do not know on that one.

21 Q What about with respect to the San Jose
22 State cooling tower application?

23 A That one, again, was done either before
24 I was there, or shortly after I arrived. I'm not
25 sure of the treatment requirement on that.

1 Q So is it your testimony that with
2 respect to both Agnews and San Jose State that you
3 don't know whether the City required pretreatment
4 as a condition of the use of recycled water in
5 those cooling towers?

6 A That's correct.

7 Q You don't know?

8 A That's correct.

9 Q I'd like you to refer again to exhibit
10 63, that's the September 15th letter. And
11 specifically to page 11, the last page.

12 The second bullet says, in the first
13 sentence: The increase in salinity caused by MEC
14 is a normal anticipated phenomenon associated with
15 SBWR's acceptance of customers that will return
16 any wastewater to the sewer, including cooling
17 tower use."

18 Do you see that statement?

19 A Yes, I do.

20 Q Is that a true statement, in your
21 opinion?

22 A Yes.

23 Q And further down there is the next-to-
24 last bullet has a statement: Calpine/Bechtel have
25 proposed to fund construction of SBWR treatment

1 facilities to reduce salinity on the recycled
2 water system if and when needed."

3 Do you see that?

4 A Yes, I do.

5 Q Is that, in your opinion, also a true
6 statement?

7 A They have proposed it, yes.

8 Q I'd like you to refer to exhibit 64 at
9 page 4, the final bullet. I'd like you to read
10 the entire final bullet there, the one beginning:
11 The effects of such a project projected
12 increases -- actually, let me read it into the
13 record: The effects of such projected increases
14 in recycled water salinity can be reduced by
15 changes in irrigation management, such as
16 marginally increasing the leaching fraction, or
17 other site-specific measures."

18 "Over time, as more recycled water is
19 used by various "closed loop" customers and
20 salinity increases accumulate, MEC expects that
21 this increasing salinity will need to be addressed
22 as part of the WPCP/SBWR program to limit
23 discharges to San Francisco Bay, and maximize the
24 beneficial reuse of recycled water."

25 Do you see that?

1 A Actually I did not find the pages.

2 Q I'm sorry?

3 A I did not find the page.

4 Q Oh, really?

5 (Pause.)

6 BY MR. ELLISON:

7 Q Have you had a chance to review that
8 now?

9 A Yes.

10 Q Is that also a true statement?

11 A Yes.

12 Q I'd like you to refer again to your
13 November 7th letter, exhibit 65. I'm sorry, your
14 November 7th memo, exhibit 65. And I'd like to
15 ask another question with respect to that sentence
16 that we discussed earlier in the first paragraph
17 on the use of recycled water.

18 The sentence saying: Even the estimated
19 0.6 mgd of wastewater discharge, the project
20 represents a significant net benefit to the City's
21 efforts to divert wastewater flows from discharge
22 to the South San Francisco Bay."

23 In your opinion does the significant net
24 benefit that you describe in that sentence, has
25 that been lessened or changed by the City

1 Council's decision?

2 A No.

3 PRESIDING MEMBER LAURIE: How much more
4 do you have, Mr. Ellison?

5 MR. ELLISON: Somewhere between five and
6 ten minutes.

7 PRESIDING MEMBER LAURIE: Thank you.

8 BY MR. ELLISON:

9 Q I'd like you to refer to page 2 of that
10 same exhibit, and specifically the first full
11 paragraph under item 3 at the top there, that
12 paragraph beginning: Whether the resolution
13 involves, et cetera. Do you see that?

14 A Yes.

15 Q Is there anything in that paragraph that
16 has been changed as a result of the City Council's
17 decision, or is that still a true statement?

18 A That is still a true statement.

19 Q With respect to the recycled water
20 pipeline route that has been proposed as part of
21 the Metcalf Energy Center project, am I correct
22 that that is SBWR's preferred route?

23 A If the pipeline were built, the answer
24 is yes.

25 Q And am I correct that the City has

1 studied that route, as well as alternative routes,
2 for serving recycled water to the Coyote Valley
3 for some time?

4 A That, and other routes have been looked
5 at as part of the overall long-term plan.

6 Q Turning again to exhibit 65 on page 2,
7 in the last paragraph above the heading, selection
8 of water supply, you discuss this pipeline, do you
9 see that?

10 A Yes.

11 Q That paragraph describes how the project
12 includes a 20-inch pipeline, but the SBWR program
13 proposes to have the applicant install a 42-inch
14 line, do you see that?

15 A Yes.

16 Q If this project were to go forward and a
17 pipeline were to be constructed, would it continue
18 to be SBWR's position that you would like to have
19 the applicant install a 42-inch pipeline?

20 A With the approval of Council we would
21 like to have a 42-inch line.

22 Q Why would you prefer to have a pipeline
23 of 42 inches rather than the 20 inches necessary
24 to serve Metcalf?

25 A The long-term plans would have those

1 customers along what we call the route the Villa
2 del Oro, because the primary customers would be
3 picked up with the industrial plants along Villa
4 del Oro to Great Oaks, along with a couple of
5 parks and a golf course.

6 It should be noted on that plan that the
7 pipeline ends north of Tulare Hill.

8 Q Is there anything about the discharge
9 from the Metcalf Energy Center that does not meet
10 the City's discharge requirements, current
11 standards?

12 MS. DENT: I'd like to ask that the term
13 discharge requirements or standards be clarified.

14 MR. ELLISON: The standards in the
15 industrial discharge waste ordinance.

16 MR. SHIPES: Excuse me? I didn't quite
17 hear the last part of it.

18 BY MR. ELLISON:

19 Q I'm referring to the standards in the
20 City ordinances regarding a discharge of
21 industrial wastes. You're familiar with those,
22 aren't you?

23 A Yes.

24 Q Okay. Is there anything in the proposed
25 Metcalf Energy Center that would not meet those

1 standards?

2 A No.

3 MR. ELLISON: That's all I have, thank
4 you, Mr. Shipes.

5 HEARING OFFICER VALKOSKY: Thank you,
6 Mr. Ellison. Ms. Willis.

7 MS. WILLIS: Thank you, I just have a
8 few questions, and partly because of the lateness
9 of the hour I just want to get some clarification.

10 CROSS-EXAMINATION

11 BY MS. WILLIS:

12 Q Mr. Ellison was asking you a
13 considerable amount of questions on the memorandum
14 dated November 7, 2000, that was marked exhibit
15 65.

16 And I just wanted to clarify that that
17 was the memo that was included in the packet to
18 the City Council, is that correct?

19 A I don't know that it was included, but I
20 would assume it was.

21 Q Okay, so your assumption it was included
22 in the packet. Is it your understanding that that
23 packet went to the City Council before their vote
24 on November 28th on the land use entitlements?

25 A I'm not aware of what exactly is in the

1 packet that was put forth by the planning
2 department.

3 Q Do you know if the City Council saw this
4 memo before they voted on the land use
5 entitlements? I guess that's my question.

6 A I don't know.

7 Q Okay, thank you. Just one, more of a
8 curiosity. On page 5 of your testimony around I
9 think it's line 11, under recycled water
10 restrictions. You talk about agreements between
11 the City, as the operator of SBWR, and any
12 retailer must be approved by the City Council
13 after receipt of the recommendation from the
14 treatment plant advisory committee, which is
15 composed of representatives from various entities
16 that use WPCP for wastewater treatment services.

17 Can you just briefly explain, I guess
18 who is involved in the treatment plant advisory
19 committee, and how that process works?

20 A Yes. The recycled water line was built
21 with wastewater funds. It is a part of the waste
22 treatment plant, and part of the waste treatment
23 plant operations.

24 Since the San Jose/Santa Clara water
25 pollution control plant is jointly owned by the

1 Cities of San Jose and Santa Clara, with the
2 tributary agencies, the treatment plant advisory
3 council is made up of representatives from the
4 City of Milpitas, Santa Clara, San Jose and from
5 the tributary agencies.

6 They make decisions based upon anything
7 that has to do with the plant, as far as
8 expenditure of funds and/or decisions based upon
9 services provided.

10 Q Now, once this treatment plan advisory
11 committee gives the Council recommendation, does
12 the Council just consider that as an advisory
13 recommendation?

14 A Yes.

15 MS. WILLIS: I don't think we have any
16 further questions.

17 PRESIDING MEMBER LAURIE: Thank you.
18 Mr. Valkosky.

19 HEARING OFFICER VALKOSKY: Thank you.
20 Before we get to the intervenors I've got one
21 other point of clarification.

22 EXAMINATION

23 BY HEARING OFFICER VALKOSKY:

24 Q Mr. Shipes, I understood your amended
25 testimony to indicate that you had recently become

1 aware of LAFCO involvement, is that correct?

2 A That's correct.

3 Q Could you explain to me what that means
4 in the context of what we're talking about? In
5 other words, is this a -- will this body be
6 involved in a further review of the water supply?
7 I'm just not sure of the implications of that.

8 PRESIDING MEMBER LAURIE: Let me add to
9 Mr. Valkosky's question: I asked a year ago
10 whether there was -- and I asked the City whether
11 there was any LAFCO decision-making, and the
12 answer was no.

13 So what has changed in the last year?

14 MR. SHIPES: I have become aware of the
15 fact that in order to provide wastewater or
16 industrial discharge permit to services outside
17 the normal City service area, it requires not only
18 the City of San Jose and Santa Clara's agreement,
19 but it requires a LAFCO agreement, also.

20 PRESIDING MEMBER LAURIE: Okay, so the
21 LAFCO issue arises because of the failure of the
22 Council to support an annexation proceeding at
23 this time?

24 MR. SHIPES: That's correct.

25 PRESIDING MEMBER LAURIE: Thank you.

1 HEARING OFFICER VALKOSKY: Thank you.

2 Ms. Cord.

3 MS. CORD: Thank you.

4 CROSS-EXAMINATION

5 BY MS. CORD:

6 Q Mr. Shipes, did you hear the public
7 comment tonight, just before the break, from Mr.
8 Whitman, I believe Whitman, from the Santa Clara
9 Valley Water District?

10 A Yes.

11 Q Okay, do you recall Mr. Whitman saying
12 that the Water District has a general -- the Board
13 has a general policy of expanding recycled water
14 use and would like to see recycled water used in
15 the cooling towers of the MEC project, or the
16 Metcalf Energy Center project, should it be
17 approved?

18 A Yes.

19 Q Okay. Do you recall Mr. Whitman stating
20 that although the Water District is primarily a
21 wholesaler, they do sometimes provide water to
22 retail customers?

23 A Yes.

24 Q Okay. Concerning the hypothetical that
25 potentially the Water District would, themselves,

1 like to provide water, this is a hypothetical, to
2 the recycled -- would like to provide recycled
3 water to the Metcalf Energy Center, does the Water
4 District have an agreement with South Bay Water
5 Recycling to receive recycled water in sufficient
6 quantities to supply the Metcalf Energy Center
7 project?

8 A No.

9 Q Okay. Is there another source, other
10 than South Bay Water Recycling water for recycled
11 water that the Santa Clara Valley Water District
12 might try to seek?

13 A No.

14 Q Okay. In order for the Santa Clara
15 Valley Water District to secure an agreement to
16 receive sufficient quantities of recycled water
17 from South Bay Water Recycling would such an
18 agreement require the approval of the San Jose
19 City Council?

20 A Yes, it would.

21 Q Thank you. And one last question. Is
22 the Santa Clara Valley Water District authorized
23 to issue a sewer permit to the Metcalf Energy
24 Center?

25 A No.

1 Q Thank you, Mr. Shipes.

2 HEARING OFFICER VALKOSKY: Thank you,
3 Ms. Cord. Mr. Scholz.

4 CROSS-EXAMINATION

5 BY MR. SCHOLZ:

6 Q If the SBWR program were planning to
7 make any additional pipeline extensions, would the
8 SBWR program notify the community affected and
9 hold several public meetings with the affected
10 community prior to a decision being made on this
11 pipeline extension?

12 A If the South Bay Water Recycling system
13 were to expand, it would go through the normal
14 CEQA process, and would hold meetings.

15 Q Thank you.

16 HEARING OFFICER VALKOSKY: Mr. Ajlouny.

17 CROSS-EXAMINATION

18 BY MR. AJLOUNY:

19 Q You mentioned that the salinity problem
20 would be for irrigation, is what I understood, is
21 that true, Mr. Shipes?

22 A It's primarily for irrigation, but
23 there's also a concern for a couple of other
24 projects. One would be for stream flow
25 augmentation. The other would be for at sometime

1 in the District future for possible use for
2 indirect potable recharge.

3 Q In today's environment, the customers
4 you have today, did I hear you say at the end of
5 your testimony that most of your customers are in
6 that category?

7 A Excuse me, in the category of what?

8 Q Category of use it for irrigation?

9 A That's correct, most of our customers
10 use it for irrigation.

11 Q So, as you understand it today, having
12 most of your customers having a concern of the
13 salinity, that would be like a high percentage,
14 like 80 percent or 90 percent?

15 A It would be those customers who -- it
16 would be a higher percentage of them, yes.

17 Q Okay. And then -- how do I ask this --
18 is the Metcalf project one of the largest projects
19 that came forward first to Santa Clara -- or to
20 the recycling organization? I mean is that one of
21 the biggest ones in recent history?

22 A I'm afraid you're going to have to
23 rephrase your question. I'm not sure I understand
24 how to answer that.

25 Q Okay.

1 MS. DENT: Are you asking the size of
2 this customer compared to others?

3 MR. AJLOUNY: Other ones that you have
4 today.

5 MS. DENT: Other current customers, if
6 you know.

7 MR. AJLOUNY: I'm kind of tired. I'm
8 having a hard time figuring out my questions, but
9 that's what I meant, thank you.

10 MS. DENT: And, again, the customers are
11 not direct to South Bay Water Recycling, so --

12 MR. SHIPES: It would be one of the
13 larger or largest customers.

14 BY MR. AJLOUNY:

15 Q Is this what -- because they're the
16 largest, is this what brought on the idea or the
17 concern of the salinity issue? Because as I
18 understand it, it wasn't an issue with the City
19 before, and now it is that Metcalf's here. And
20 I'm just wondering, is it because of the size of
21 the amounts?

22 A It's not Metcalf, in and of itself, it's
23 a combination of looking at Metcalf Energy Center
24 and a project called U.S. Dataport project, which
25 is another very very high volume user that, if

1 approved, would also cause salinity problems.

2 It's also looking at the use of the
3 recycled water, as we're trying to expand into use
4 in industrial areas, particularly in the areas of
5 semiconductors and to other industrial customers
6 that use large RO systems, that the issue of
7 salinity becomes more of an issue that we need to
8 address.

9 Q So to help me understand, before Metcalf
10 came around, was there an issue of the salinity?

11 A There's been a concern for salinity for
12 quite awhile, and there's been on the table at
13 least looking at advanced water treatment units to
14 look at reducing the salinity. And that was
15 actually in place, proposing these projects,
16 before I was hired on to the City.

17 Q Okay. And as you understand today, you
18 have two large projects that were proposed to you,
19 and that's the Metcalf and also Dataport, you
20 called it?

21 A There's actually, the U.S. Dataport and
22 the Metcalf Energy Center, but there's also prior
23 to that, you had U.S. Filters and you have Ionics,
24 which are companies provide DI water to other
25 companies, primarily into semiconductors. And

1 their salinity uses were a major concern at the
2 time. They still are.

3 Q Is the U.S. Dataport aware of the
4 salinity problem, also?

5 A Yes, they are.

6 Q And that's all documented?

7 A It's been in early negotiations and
8 discussions with them. They are aware of it.

9 Q So I have no reason to believe that this
10 issue of salinity is just focused on Metcalf?
11 It's other large customers, also?

12 A Yes.

13 Q Okay. I was just concerned that
14 maybe --

15 A No, it was actually a concern before the
16 Metcalf Energy Center was proposed. It was a
17 concern with U.S. Filters and Ionics, relocated
18 new facilities that were larger with higher
19 discharges of salinity.

20 Q Thank you for clarifying that.

21 MR. AJLOUNY: That's all my questions.

22 PRESIDING MEMBER LAURIE: Mr. Valkosky.

23 HEARING OFFICER VALKOSKY: Mr. Garbett.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. GARBETT:

3 Q Mr. Shipes, does the City discharge
4 wastewater and our sewage into San Francisco Bay?

5 A The City discharges treated wastewater
6 to the San Francisco Bay.

7 Q Thank you. Do you make any of these
8 discharges to the Pacific Ocean?

9 A We discharge to San Francisco Bay.

10 Q Okay. I take that as a no to the
11 Pacific Ocean.

12 In this case, does the couple sections
13 cited previously in the state water code and so
14 forth, indicate that recycled water is necessary
15 because that only applies to discharges to the
16 ocean, and not to bays. Would that be a matter of
17 fact and law to be determined by the Commission?

18 A I don't know that I can answer that
19 question.

20 Q Thank you.

21 HEARING OFFICER VALKOSKY: Mr. Williams.

22 MR. WILLIAMS: Thank you, sir.

23 CROSS-EXAMINATION

24 BY MR. WILLIAMS:

25 Q Are you familiar with the location of

1 the UTC Rocket Test Center, approximately?

2 A Yes, I am.

3 Q Is there sewage service and water
4 service to that rocket test center at the present
5 time if you know?

6 A I don't know. I haven't looked.

7 Q Did you examine the -- were you aware of
8 the rocket test center was an alternate site in
9 this application?

10 A I knew there were many alternatives
11 sites. I didn't particularly know that the UTC
12 site was.

13 Q I see. Are you aware or were you aware
14 of any studies to run a treated sewage line to UTC
15 site?

16 A No.

17 Q Okay, let me shift to the Datapoint
18 site. Approximately what is the location of the
19 Datapoint site, if you know?

20 A The Dataport project is in Alviso. It's
21 adjacent to the San Jose/Santa Clara water
22 pollution control plant off of 237 between Zanker,
23 237, and Coyote Creek.

24 Q What is the length of the water
25 treatment line to that site?

1 A It's fairly short. I have not measured
2 it.

3 Q It would be under a mile, then, even
4 under a quarter of a mile?

5 A It would depend on where it tapped off
6 at.

7 Q Thank you. Were you aware of the
8 consideration of treated water at any of the other
9 alternate sites for the Metcalf application?

10 A Yes.

11 Q Which sites were feasible for the use of
12 the treated water?

13 A They would be the sites that were
14 located adjacent to where the U.S. Dataport
15 project would be. I think there were two sites
16 that were identified.

17 Q Yes. What about sites 3 and 4, if you
18 remember? They were over toward -- if I remember
19 correctly.

20 A I'm not familiar. I think those are
21 outside of our jurisdictional area.

22 Q I see.

23 HEARING OFFICER VALKOSKY: Mr. Williams,
24 how does this apply to the scope of the witness'
25 testimony?

1 MR. WILLIAMS: I'm just concerned about
2 the issue of alternatives when it gets to override
3 concerns.

4 HEARING OFFICER VALKOSKY: Well, let's
5 take that up during alternatives. Right now we're
6 on soil and water resources.

7 MR. WILLIAMS: Yes, sir. That completes
8 my questions, thank you.

9 HEARING OFFICER VALKOSKY: Thank you.
10 Redirect, Ms. Dent?

11 MS. DENT: I'm only going to ask one
12 question.

13 REDIRECT EXAMINATION

14 BY MS. DENT:

15 Q You were asked questions about providing
16 City studies to Metcalf Energy Center. As far as
17 you know, has the City ever declined or refused to
18 provide a study that they've been asked for --

19 A No.

20 Q -- to Metcalf Energy Center?

21 A No.

22 MS. DENT: Thank you.

23 HEARING OFFICER VALKOSKY: Anything
24 further, Mr. Ellison?

25 PRESIDING MEMBER LAURIE: This is

1 recross.

2 MS. DENT: I kept it short on purpose.

3 MR. ELLISON: No, the hour is late, we
4 have no further questions.

5 PRESIDING MEMBER LAURIE: Thank you,
6 sir.

7 HEARING OFFICER VALKOSKY: All right, I
8 take it applicant would have been the only one
9 with an interest in the studies. Anything from
10 staff?

11 MS. DENT: Have I moved Mr. Shipes'
12 testimony into evidence?

13 MR. SHIPES: Yes.

14 MS. DENT: Thank you.

15 HEARING OFFICER VALKOSKY: Yes, you
16 have.

17 With that we'll close the evidence on
18 soil and water resources subject to potential
19 reopening on the scope of the matters discussed
20 previously with Mr. Ellison.

21 And with that we'll reconvene at 6:00
22 a.m. sharp.

23 (Laughter.)

24 HEARING OFFICER VALKOSKY: Okay, okay,
25 you folks are still awake. Great.

1 MR. ELLISON: Actually, Mr. Valkosky,
2 can we leave the record open for just one second.
3 I would like to make a request on the record for
4 the study that the City referred to in this
5 examination.

6 Is there any problem providing that at
7 this time? Just providing it to us.

8 MR. SHIPES: Which study are you asking
9 about?

10 MR. ELLISON: Referring to the --

11 MS. DENT: Are you referring to Baum and
12 Schieck study?

13 MR. ELLISON: Yes, I am, the written
14 Baum and Schieck study that Mr. Shipes testified
15 exists.

16 MR. SHIPES: Okay, if it exists, you
17 will be provided with it.

18 MR. ELLISON: If it exists?

19 MR. SHIPES: I think that it does exist.
20 If it does exist you will be provided with it.

21 MR. WILLIAMS: Could it be put to the
22 proof of service list, please?

23 HEARING OFFICER VALKOSKY: Certainly, it
24 can be, if the City is willing to do that.
25 Remember that the City is not a party. They are

1 just a participating agency. They are not under
2 an obligation. If they so choose, they may do
3 that.

4 MR. WILLIAMS: Could the CEC provide it,
5 then, through the docket?

6 HEARING OFFICER VALKOSKY: You'll have
7 to deal with staff on that one.

8 MS. DENT: We will provide any material
9 that we provide to participants in --

10 HEARING OFFICER VALKOSKY: Okay, --

11 MS. DENT: -- the proceeding.

12 HEARING OFFICER VALKOSKY: -- there you
13 are. Thank you, Ms. Dent.

14 We're adjourned. 2:00 p.m. tomorrow.

15 (Whereupon, at 12:55 a.m., the hearing
16 was adjourned, to reconvene at 2:00
17 p.m., Friday, January 19, 2001, at this
18 same location.)

19 --o0o--

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CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Hearing; that it was thereafter
transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
hearing, nor in any way interested in outcome of
said hearing.

IN WITNESS WHEREOF, I have hereunto set
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